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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 730

RIN 3206-AK60

### Notification of Post-Employment Restrictions

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Personnel Management is issuing interim regulations requiring agencies to notify members of the Senior Executive Service (SES) and other employees in senior positions of certain post-employment conflict-of-interest restrictions. Agencies must provide written notification to affected employees of the new salary-based threshold for determining the applicability of the post-employment conflict-of-interest restrictions.

**DATES:** *Effective Date:* January 1, 2004.

*Applicability Date:* The regulations apply on the first day of the first applicable pay period beginning on or after October 15, 2004.

*Comment Date:* Comments must be received on or before December 14, 2004.

**ADDRESSES:** Send or deliver comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415-8200; by FAX at (202) 606-0824; or by e-mail at [pay-performance-policy@opm.gov](mailto:pay-performance-policy@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** For information, please contact Jo Ann Perrini by telephone at (202) 606-2858; by FAX at (202) 606-0824; or by e-mail at [pay-performance-policy@opm.gov](mailto:pay-performance-policy@opm.gov).

**SUPPLEMENTARY INFORMATION:** Section 1125(b) of Public Law 108-136

established a new salary-based threshold for determining the applicability of certain post-employment conflict-of-interest restrictions under 18 U.S.C. 207(c). The new salary-based threshold became effective on the first day of the first applicable pay period beginning on or after January 1, 2004 (January 11, 2004, for most employees). As a result of the higher rates of basic pay established for members of the Senior Executive Service (SES) upon conversion to the new performance-based SES pay system in January 2004, the vast majority of SES members are now subject to the post-employment restrictions in 18 U.S.C. 207(c).

### SES Performance-Based Pay System

Section 1125(a) of Public Law 108-136 (November 24, 2003) amended 5 U.S.C. 5382 to establish a new performance-based pay system for the SES that became effective on the first day of the first pay period beginning on or after January 1, 2004 (January 11, 2004, for most employees). On January 13, 2004, the Office of Personnel Management (OPM) issued interim regulations (69 FR 2048) to establish the new SES performance-based pay system, prescribe the rules for conversion to the new SES pay system, and outline the criteria for providing pay adjustments to SES members on or after the first applicable pay period beginning on or after January 1, 2004 (January 11, 2004, for most employees). Generally, the employee's newly converted SES rate of basic pay is equal to the rate of basic pay plus any applicable locality payment to which the employee was entitled on January 10, 2004. (In cases where the SES member's rate of basic pay, plus any applicable locality-based comparability payment under 5 U.S.C. 5304 to which the employee was entitled on November 24, 2003, was higher, the employee was entitled to that higher rate upon conversion to the new SES pay system.)

### Post-Employment Restrictions

Section 1125(b)(1) amended 18 U.S.C. 207(c)(2)(A)(ii) to require SES members and other individuals who are paid at a rate of basic pay that is equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule (*i.e.*, equal to or greater than \$136,757 in 2004) to be subject to the post-

employment restrictions in 18 U.S.C. 207(c). In addition, a grandfather provision in section 1125(b)(1) applies to certain SES members and other individuals for a period of 2 years, through November 24, 2005. If such individuals, on November 23, 2003, were subject to 18 U.S.C. 207(c) and were employed in positions whose rate of basic pay, exclusive of locality payments under 5 U.S.C. 5304, was equal to or greater than the rate of basic pay payable for level 5 of the SES (*i.e.*, \$134,000), they will be subject to the 1-year post-employment restrictions in 18 U.S.C. 207(c) until November 24, 2005, without regard to any subsequent changes in position or pay. If at the end of the extended coverage period (November 24, 2005), a covered employee is paid at a rate of basic pay that is equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule, he or she will continue to be subject to the post-employment restrictions in 18 U.S.C. 207(c).

The post-employment restrictions in 18 U.S.C. 207(c) require that for 1 year after service in a covered position ends, no former employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which he or she served in any capacity during the 1-year period prior to ending service in that position, if that communication or appearance is made on behalf of any other person (except the United States) in connection with any matter concerning which he or she seeks official action by that employee. Employees subject to 18 U.S.C. 207(c) also are subject to 18 U.S.C. 207(f), which imposes additional restrictions on representing, aiding, or advising certain foreign entities with the intent to influence any officer or employee of any department or agency of the United States.

### Agency Notification Requirements

Section 1125(b) also added a new section 7302 to chapter 73 of title 5, United States Code, to require OPM, in consultation with the Attorney General and the Office of Government Ethics, to promulgate regulations requiring each executive branch agency to provide written notification to an employee of that agency who is subject to the post-employment conflict-of-interest



restrictions in 18 U.S.C. 207(c)(1) as a result of the amendment to 18 U.S.C. 207(c)(2)(A)(ii).

On January 6, 2004, OPM issued a memorandum providing additional guidance on the new salary-based threshold for determining the applicability of certain post-employment conflict-of-interest restrictions to SES members. (See "Notification of Changes in Post-Employment Restrictions Coverage for Members of the Senior Executive Service (SES)" at <http://www.opm.gov/oca/compmemo/2004/2004-01.asp>.) In that memorandum, OPM encouraged agencies to identify and notify those SES members who would be covered by the post-employment restrictions as of January 11, 2004. We also provided written sample notices that agencies could use to notify their employees.

In these interim regulations, we have added a new 5 CFR part 730, which requires agencies to provide written notice to affected employees before, or as part of, any action that affects the employee's coverage under 18 U.S.C. 207(c)(1), including when employment or service in a covered position is terminated. A copy of the written notice must be provided simultaneously to the Designated Agency Ethics Official (or a delegate) for the agency involved. The notices are to be retained for the particular individual as part of the OGE/GOVT-1 Governmentwide System of Records. (See 68 FR 3098 (January 22, 2003) (Privacy Act system notice).) However, post-employment restrictions apply to covered employees whether or not they receive a written notice from their agencies.

#### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

#### Waiver of Notice of Proposed Rulemaking

Pursuant to sections 553(b)(3)(B) and (d)(3), of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making this rule effective in less than 30 days. These regulations implement section 1125(b) of Public Law 108-136, which requires OPM, in consultation with the Attorney General and the Office of Government Ethics, to promulgate regulations no later than 180 days after the law's effective date (by May 24, 2004). The waiver of the two requirements in sections 553(b)(3)(B) and (d)(3) is necessary in order for OPM to comply

with the law by consulting with the designated officials and promulgating regulations by the deadline imposed by Congress.

#### E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

#### List of Subjects in 5 CFR Part 730

Government employees.

Office of Personnel Management.

**Kay Coles James,**  
*Director.*

■ Accordingly, OPM is adding a new part 730 to read as follows:

#### PART 730—NOTIFICATION OF POST-EMPLOYMENT RESTRICTIONS

Sec.

- 730.101 Purpose.
- 730.102 Definitions.
- 730.103 Coverage.
- 730.104 Notification.
- 730.105 Savings provision.

**Authority:** 5 U.S.C. 7302 and sec. 1125(b) of the National Defense Authorization Act for FY 2004, Pub. L. 108-136, 117 Stat. 1392.

##### § 730.101 Purpose.

This part implements 5 U.S.C. 7302, which requires agencies to provide written notice to senior executives and other individuals covered by 18 U.S.C. 207(c)(2)(A)(ii) that they are subject to certain post-employment conflict-of-interest restrictions in 18 U.S.C. 207(c).

##### § 730.102 Definitions.

*Agency* means an Executive agency as defined in 5 U.S.C. 105, but does not include the General Accounting Office.

*Senior executive* means a member of the Senior Executive Service (SES).

##### § 730.103 Coverage.

(a) The following individuals are subject to the post-employment conflict-of-interest restrictions in 18 U.S.C. 207(c), as amended by section 1125(b)(1) of the National Defense Authorization Act for FY 2004:

(1) Any individual, including a senior executive, who is paid at a rate of basic pay equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule; and

(2) Any individual, including a senior executive, who as of November 23, 2003, was paid at a rate of basic pay, exclusive of any locality-based comparability payments under 5 U.S.C. 5304, equal to or greater than the rate of basic pay for level 5 of the Senior Executive Service on that date (*i.e.*, \$134,000). These employees are subject to the post-employment restrictions through November 24, 2005, without

regard to any subsequent changes in position or pay.

(b) Nothing in this part affects individuals serving in positions described in 18 U.S.C. 207(c)(2)(A)(i), (iii), (iv), or (v).

#### § 730.104 Notification.

(a) Agencies must provide written notification to senior executives and other individuals covered by the amendment to 18 U.S.C. 207(c)(2)(A)(ii) that they are subject to the post-employment conflict-of-interest restrictions in 18 U.S.C. 207, before, or as part of, any personnel action that affects the employee's coverage under 18 U.S.C. 207(c)(1), including when employment or service in a covered position is terminated. A copy of the written notice must be provided simultaneously to the Designated Agency Ethics Official (or his or her delegate). The written notice must include information on the applicable penalties or injunctions that may be imposed under 18 U.S.C. 216(a), (b), and (c) for violations of the post-employment restrictions in 18 U.S.C. 207(c). The notice also must indicate that employees covered by 18 U.S.C. 207(c) are subject to 18 U.S.C. 207(f), which imposes additional post-employment restrictions on representing, aiding, or advising certain foreign entities.

(b) Notwithstanding paragraph (a) of this section, the post-employment restrictions in 18 U.S.C. 207(c) apply to covered employees without regard to whether they receive written notice from their employing agency.

#### § 730.105 Savings provision.

Any post-employment restrictions established under 18 U.S.C. 207 and applicable prior to the first day of the first pay period beginning on or after January 1, 2004, remain in effect.

[FR Doc. 04-23194 Filed 10-14-04; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2003-NE-68-AD; Amendment 39-13825; AD 2004-21-04]

RIN 2120-AA64

**Airworthiness Directives; Becker Flugfunkwerk GmbH AR 4201 VHF AM Transceivers**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Becker Flugfunkwerk GmbH AR 4201 VHF AM transceivers. This AD requires adding an aircraft flight manual (AFM) limitation to the Limitations Section of the AFM, and cockpit placard due to the intermittent malfunctioning of the transceiver, or removing the affected transceiver from service. This AD results from reports of crewmembers having difficulty communicating with Air Traffic Control and other aircraft due to the AR 4201 VHF AM transceiver's inability to block interference from transmitters operating on frequencies other than those set in the transceiver. We are issuing this AD to prevent difficulty in communicating with Air Traffic Control and other aircraft due to intermittent malfunctioning of the transceiver.

**DATES:** This AD becomes effective November 19, 2004.

**ADDRESSES:** You may examine the AD Docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** David Setser, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7173; fax (781) 238-7170.

**SUPPLEMENTARY INFORMATION:** The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to Becker Flugfunkwerk GmbH AR 4201 VHF AM transceivers. We published the proposed AD in the **Federal Register** on May 20, 2004 (69 FR 29108). That action proposed to require adding an aircraft flight manual (AFM) limitation to the Limitations Section of the AFM, and cockpit placard due to the intermittent malfunctioning of the transceiver, or removing the affected transceiver from service.

*Examining the AD Docket:* You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

**Comments**

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

**Conclusion**

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

**Costs of Compliance**

There are 9,349 Becker Flugfunkwerk GmbH AR 4201 VHF AM transceivers of the affected design in the worldwide fleet. There are about 1,000 transceivers installed on aircraft of U.S. registry. We estimate that it would take about 2 work hours per transceiver to inspect and or remove a transceiver from service, and that the average labor rate is \$65 per work hour. The average retail cost of an AR 4201 transceiver is \$1,149. If all transceivers were replaced, the total purchase cost would be about \$1,149,000. Based on these figures, the total cost of the AD to U.S. operators to replace transceivers is estimated to be \$1,279,000.

**Regulatory Findings**

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003-NE-68-AD" in your request.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**2004-21-04 Becker Flugfunkwerk GmbH:** Amendment 39-13825. Docket No. 2003-NE-68-AD.

**Effective Date**

(a) This AD becomes effective November 19, 2004.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Becker Flugfunkwerk GmbH AR 4201 VHF AM transceivers, with serial numbers (SNs) 0150 through 9499.

**Unsafe Condition**

(d) This AD results from reports of crewmembers having difficulty communicating with Air Traffic Control and other aircraft due to the AR 4201 VHF AM transceiver's inability to block interference from transmitters operating on frequencies other than those set in the transceiver. We are issuing this AD to prevent difficulty in communicating with Air Traffic Control and other aircraft due to intermittent malfunctioning of the transceiver.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within five days after the effective date of this AD, unless the actions have already been done.

(f) For installed Becker Flugfunkwerk GmbH AR 4201 VHF AM transceivers, inspect the SN. If the transceiver does not have an affected SN, no further action is required.

(g) If the transceiver has an affected SN, and does not have Change Index 02 or higher index number marked on it, do the following:

(1) Add an aircraft flight manual (AFM) limitation to the Limitations Section of the AFM, that restricts transceiver usage to VFR operations, and add a placard to the cockpit within view of the pilot that states, in ¼ inch-high or higher characters, "Use of Becker Comm Equipment AR 4201 is restricted to VFR operations"; or

(2) Remove the transceiver from service.

(h) After the effective date of this AD, do not install any Becker Flugfunkwerk GmbH AR 4201 VHF AM transceiver with an affected SN that does not have Change Index 02 or higher index number marked on it, unless it was removed to determine the SN or to check for Change Index 02 or higher index number.

**Terminating Action**

(i) If you later install a transceiver that is not listed in this AD or install a transceiver that is marked with Change Index 02 or higher index number, remove the limitation from the Limitations Section of the AFM, and placard if present, that are specified in paragraph (g)(1).

### Alternative Methods of Compliance

(j) The Manager, Boston Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

### Material Incorporated by Reference

(k) None.

### Related Information

(l) LBA airworthiness directive No. 2003-234, dated August 21, 2003, and Becker Flugfunkwerk GmbH Service Bulletin No. AR 4201-01/03; dated July 22, 2003, also pertain to the subject of this AD.

Issued in Burlington, Massachusetts, on October 8, 2004.

Jay J. Pardee,

Manager, Engine and Propeller Directorate,  
Aircraft Certification Service.

[FR Doc. 04-23143 Filed 10-14-04; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 97

[Docket No. 30425; Amdt. No. 3106]

### Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective October 15, 2004. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 15, 2004.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

*For Purchase—*Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—*Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

#### FOR FURTHER INFORMATION CONTACT:

Donald P. Pate, Flight Procedure Standards Branch (AMCAFS-420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954-4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by

publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

### The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

### Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air Traffic Control, Airports,  
Incorporation by reference, and  
Navigation (Air).

Issued in Washington, DC, on September 23, 2004.

**James J. Ballough,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

**PART 97— STANDARD INSTRUMENT APPROACH PROCEDURES**

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

\* \* \* *Effective October 28, 2004*

San Francisco, CA, San Francisco Intl, LDA PRM RWY 28R, Orig-A, (Simultaneous Close Parallel)  
San Francisco, CA, San Francisco Intl, ILS PRM RWY 28L, Orig-A (Simultaneous Close Parallel)  
Claremore, OK, Claremore Regional, RNAV (GPS) RWY 35, Amdt 1  
Claremore, OK, Claremore Regional, VOR/DME-A, Amdt 2  
Claremore, OK, Claremore Regional, VOR/DME-B, Amdt 3  
Bennington, VT, William H. Morse State, VOR RWY 13, Orig  
Bennington, VT, William H. Morse State, VOR-A, Amdt 9, CANCELLED  
Bennington, VT, William H. Morse State, RNAV (GPS) RWY 13, Orig-A

\* \* \* *Effective November 25, 2004*

Nulato, AK, Nulato, RNAV (GPS) RWY 2, Orig  
Nulato, AK, Nulato, RNAV (GPS) RWY 20, Orig  
Apple Valley, CA, Apple Valley, RNAV (GPS) RWY 18, Orig-A  
Hemet, CA, Hemet-Ryan, RNAV (GPS) RWY 5, Orig-A  
Cloverdale, CA, Cloverdale Muni, RNAV (GPS) RWY 32, Orig-A  
Napa, CA, Napa County, RNAV (GPS) RWY 6, Orig-A  
Ramona, CA, Ramona, RNAV (GPS) RWY 9, Orig-A  
San Carlos, CA, San Carlos, RNAV (GPS) RWY 30, Orig-A  
San Francisco, CA, San Francisco Intl, RNAV (GPS) Z RWY 10R, Orig-B  
San Francisco, CA, San Francisco Intl, RNAV (GPS) Z RWY 19R, Orig-B  
San Francisco, CA, San Francisco Intl, RNAV (GPS) Z RWY 19L, Orig-B

San Francisco, CA, San Francisco Intl, RNAV (GPS) RWY 28L, Orig-B  
San Francisco, CA, San Francisco Intl, RNAV (GPS) RWY 28R, Amdt 1B  
San Jose, CA, Norman Y. Mineta San Jose International, RNAV (GPS) RWY 30R, Orig-B  
San Jose, CA, Norman Y. Mineta San Jose International, RNAV (GPS) RWY 29, Orig-B  
Susanville, CA, Susanville Muni, RNAV (GPS) RWY 29, Orig-A  
Susanville, CA, Susanville Muni, RNAV (GPS)-A, Orig-A  
St Marys, GA, St Marys, RNAV (GPS) RWY 13, Orig  
St Marys, GA, St Marys, RNAV (GPS) RWY 31, Orig  
Agana, GU, Guam International, RNAV (GPS) RWY 6R, Orig-A  
Agana, GU, Guam International, RNAV (GPS) Z RWY 6L, Orig-B  
Agana, GU, Guam International, RNAV (GPS) RWY 24R, Orig-A  
Agana, GU, Guam International, RNAV (GPS) RWY 24L, Orig-A  
Lihue, HI, Lihue, RNAV (GPS) RWY 17, Orig-A  
Lihue, HI, Lihue, RNAV (GPS) RWY 21, Orig-A  
Fort Wayne, IN, Fort Wayne Intl, VOR OR TACAN RWY 23, Amdt 13  
Indianapolis, IN, Greenwood Muni, NDB RWY 1, Amdt 3  
Indianapolis, IN, Greenwood Muni, VOR-A, Amdt 5  
Indianapolis, IN, Greenwood Muni, RNAV (GPS) RWY 1, Orig  
Indianapolis, IN, Greenwood Muni, RNAV (GPS) RWY 19, Orig  
Indianapolis, IN, Greenwood Muni, GPS RWY 19, Orig, CANCELLED  
Washington, IN, Daviess County, NDB RWY 18, Amdt 7  
Washington, IN, Daviess County, RNAV (GPS) RWY 18, Orig  
Washington, IN, Daviess County, GPS RWY 18, Orig, CANCELLED  
Hyannis, MA, Barnstable Muni-Boardman/Polando Field, VOR RWY 6, Amdt 8  
Grand Haven, MI, Grand Haven Meml Airpark, VOR-A, Amdt 16  
Grand Haven, MI, Grand Haven Meml Airpark, VOR/DME RNAV RWY 27, Amdt 6  
Grand Haven, MI, Grand Haven Meml Airpark, RNAV (GPS) RWY 9, Orig  
Grand Haven, MI, Grand Haven Meml Airpark, RNAV (GPS) RWY 27, Orig  
Hancock, MI, Houghton County Memorial, VOR RWY 13, Amdt 16  
Hancock, MI, Houghton County Memorial, RNAV (GPS) RWY 13, Orig  
Clinton, NC, Sampson County, RNAV (GPS) RWY 6, Orig  
Clinton, NC, Sampson County, RNAV (GPS) RWY 24, Orig  
Clinton, NC, Sampson County, LOC RWY 6, Amdt 1  
Clinton, NC, Sampson County, NDB RWY 6, Amdt 6  
Clinton, NC, Sampson County, VOR/DME-A, Amdt 5  
Clinton, NC, Sampson County, GPS RWY 6, Orig, CANCELLED  
Clinton, NC, Sampson County, GPS RWY 24, Orig, CANCELLED

Greensboro, NC, Piedmont Triad Intl, RNAV (GPS) RWY 23, Amdt 1  
Greensboro, NC, Piedmont Triad Intl, RNAV (GPS) RWY 5, Amdt 1  
Greensboro, NC, Piedmont Triad Intl, RNAV (GPS) RWY 14, Amdt 1  
Greensboro, NC, Piedmont Triad Intl, RNAV (GPS) RWY 32, Amdt 1  
Fargo, ND, Hector Intl, RNAV (GPS) RWY 9, Orig  
Fargo, ND, Hector Intl, RNAV (GPS) RWY 18, Orig  
Fargo, ND, Hector Intl, RNAV (GPS) RWY 27, Orig  
Fargo, ND, Hector Intl, RNAV (GPS) RWY 36, Orig  
Fargo, ND, Hector Intl, RNAV (GPS) RWY 8, Orig, CANCELLED  
Fargo, ND, Hector Intl, RNAV (GPS) RWY 17, Orig, CANCELLED  
Fargo, ND, Hector Intl, RNAV (GPS) RWY 26, Orig-A, CANCELLED  
Fargo, ND, Hector Intl, RNAV (GPS) RWY 35, Orig-B, CANCELLED  
Fargo, ND, Hector Intl, ILS OR LOC RWY 18, Orig  
Fargo, ND, Hector Intl, ILS OR LOC RWY 36, Orig  
Fargo, ND, Hector Intl, ILS RWY 17, Amdt 4D, CANCELLED  
Fargo, ND, Hector Intl, ILS RWY 35, Amdt 32E, CANCELLED  
Fargo, ND, Hector Intl, NDB RWY 17, Amdt 14C, CANCELLED  
Fargo, ND, Hector Intl, VOR OR TACAN RWY 35, Amdt 12C, CANCELLED  
Fargo, ND, Hector Intl, NDB RWY 18, Orig  
Fargo, ND, Hector Intl, VOR/DME OR TACAN RWY 18, Amdt 1  
Fargo, ND, Hector Intl, VOR OR TACAN RWY 36, Orig  
Fargo, ND, Hector Intl, RADAR-1, Amdt 11  
Cleveland, OH, Cleveland-Hopkins Intl, ILS OR LOC RWY 6R, Amdt 19B, ILS RWY 6R (CAT II), Amdt 19B, ILS RWY 6R (CAT III), Amdt 19B  
Kent, OH, Kent State University, RNAV (GPS) RWY 1, Orig  
Kent, OH, Kent State University, RNAV (GPS) RWY 19, Orig  
Kent, OH, Kent State University, NDB RWY 1, Amdt 12  
Kent, OH, Kent State University, VOR-A, Amdt 13  
Kent, OH, Kent State University, GPS RWY 19, Orig, CANCELLED  
Norman, OK, University of Oklahoma Westheimer, ILS OR LOC RWY 17, Orig  
College Station, TX, Easterwood Field, RNAV (GPS) RWY 34, Orig  
College Station, TX, Easterwood Field, RNAV (GPS) RWY 28, Orig  
College Station, TX, Easterwood Field, RNAV (GPS) RWY 10, Orig  
College Station, TX, Easterwood Field, RNAV (GPS) RWY 16, Orig  
College Station, TX, Easterwood Field, ILS OR LOC RWY 34, Amdt 12  
College Station, TX, Easterwood Field, NDB RWY 34, Amdt 12  
College Station, TX, Easterwood Field, VOR OR TACAN RWY 10, Amdt 19  
College Station, TX, Easterwood Field, LOC BC RWY 16, Amdt 6  
College Station, TX, Easterwood Field, VOR/DME RWY 28, Amdt 13

College Station, TX, Easterwood Field, GPS RWY 10, Orig-A, CANCELLED  
 College Station, TX, Easterwood Field, GPS RWY 16, Orig, CANCELLED  
 College Station, TX, Easterwood Field, GPS RWY 28, Orig, CANCELLED  
 College Station, TX, Easterwood Field, GPS RWY 34, Orig-A, CANCELLED  
 Eagle Lake, TX, Eagle Lake, RNAV (GPS) RWY 17, Orig  
 Eagle Lake, TX, Eagle Lake, RNAV (GPS) RWY 35, Orig  
 Eagle Lake, TX, Eagle Lake, VOR RWY 17, Amdt 5  
 El Paso, TX, El Paso Intl, VOR RWY 26L, Amdt 30  
 Houston, TX, William P. Hobby, NDB RWY 4, Amdt 33, CANCELLED  
 Lawrenceville, VA, Lawrenceville/Brunswick Muni, RNAV (GPS) RWY 18, Orig  
 Lawrenceville, VA, Lawrenceville/Brunswick Muni, RNAV (GPS) RWY 36, Orig  
 Sheboygan, WI, Sheboygan County Memorial, RNAV (GPS) RWY 3, Orig  
 Sheboygan, WI, Sheboygan County Memorial, RNAV (GPS) RWY 13, Orig  
 Sheboygan, WI, Sheboygan County Memorial, RNAV (GPS) RWY 31, Orig  
 Sturgeon Bay, WI, Door County Cherryland, NDB RWY 2, Amdt 11  
 Sturgeon Bay, WI, Door County Cherryland, SDF RWY 2, Amdt 7  
 Sturgeon Bay, WI, Door County Cherryland, RNAV (GPS) RWY 2, Orig  
 Sturgeon Bay, WI, Door County Cherryland, RNAV (GPS) RWY 10, Orig  
 Sturgeon Bay, WI, Door County Cherryland, RNAV (GPS) RWY 20, Orig  
 Sturgeon Bay, WI, Door County Cherryland, RNAV (GPS) RWY 28, Orig  
 Afton, WY, Afton Muni, RNAV (GPS) RWY 16, Amdt 1  
 Afton, WY, Afton Muni, RNAV (GPS) RWY 34, Amdt 1

The FAA published several Amendments in Docket No. 30424, Amdt No. 3105 to Part 97 of the Federal Aviation Regulations (Vol 69, FR No. 181, Pages 56161–56163; dated Monday, September 20, 2004) under Section 97.33 effective November 25, 2004 which are hereby rescinded in their entirety:

Payson, AZ, Payson, RNAV (GPS)–A, Amdt 1A  
 Inyokern, CA, Inyokern, RNAV (GPS) Y RWY 2, Orig-A  
 Battle Mountain, NV, Battle Mountain, RNAV (GPS) RWY 3, Orig-A

[FR Doc. 04–22945 Filed 10–14–04; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 350

[Docket No. 1978N–0064]

RIN 0910–AC89

#### Antiperspirant Drug Products for Over-the-Counter Human Use; Final Monograph; Partial Stay; Reopening of the Administrative Record

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; partial stay; reopening of the administrative record.

**SUMMARY:** The Food and Drug Administration (FDA) is staying part of the final monograph (FM) for over-the-counter (OTC) antiperspirant drug products that published in the **Federal Register** on June 9, 2003 (68 FR 34273). The FM established conditions under which OTC antiperspirant drug products are generally recognized as safe and effective (GRASE) and not misbranded. This partial stay applies only to the labeling claims for enhanced duration in § 350.50(b)(3) and (b)(5) (21 CFR 350.50(b)(3) and (b)(5)). In addition, FDA is reopening the administrative record for the rulemaking on OTC antiperspirant drug products to allow for comment and data specifically on the information requested in this document. FDA is taking this action in response to a citizen petition containing data demonstrating that FDA's effectiveness testing guidelines for OTC antiperspirant drug products may support an enhanced duration claim greater than 24 hours. This action is part of FDA's ongoing review of OTC drug products.

**DATES:** This rule is effective December 9, 2004. The limitation of the enhanced duration claim to 24 hours (21 CFR 350.50(b)(3) and (b)(5)) is stayed until further notice.

Submit written or electronic comments and data by April 13, 2005. The administrative record will remain open until April 13, 2005.

**ADDRESSES:** You may submit comments, identified by Docket No. 1978N–0064 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Agency Web site: <http://www.fda.gov/dockets/ecomments>. Follow instructions for submitting comments on the agency Web site.

• E-mail: [fdadockets@oc.fda.gov](mailto:fdadockets@oc.fda.gov). Include Docket No. 1978N–0064 in the subject line of your e-mail message.

• FAX: 301–827–6870.

• Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**Instructions:** All submissions received must include the agency name and Docket No. 1978N–0064. All comments received will be posted without change to <http://www.fda.gov/dockets/ecomments>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Comments” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.fda.gov/dockets/ecomments> and/or the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Xin Zhou, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In the **Federal Register** of October 10, 1978 (43 FR 46694), FDA published an advance notice of proposed rulemaking (ANPRM) to establish a monograph for OTC antiperspirant drug products, together with the recommendations of the Advisory Review Panel on OTC Antiperspirant Drug Products (the Panel), which evaluated the data on these products. The Panel classified claims for enhanced duration of effect as Category III (more data needed) because the Panel did not receive any scientific data to support a claim of prolonged or enhanced duration of effect (43 FR 46694 at 46728).

In the **Federal Register** of August 20, 1982 (47 FR 36492), FDA issued a proposed rulemaking or tentative final monograph (TFM) for OTC antiperspirant drug products. To standardize the antiperspirant drug product effectiveness test, FDA also issued guidelines for effectiveness testing of antiperspirant drug products (47 FR 36492 at 36504). However, FDA did not include testing recommendations for an enhanced duration claim in these guidelines because the Panel had not recommended such guidelines and FDA

received no comments on this subject in response to publication of the ANPRM.

In response to the TFM, FDA received data from 15 studies to support enhanced duration claims. FDA found the studies supportive of a 24-hour or all day protection claim and included such a claim in § 350.50(b)(3) and (b)(5) of the FM. However, FDA stated that claims of enhanced duration for more than 24 hours are nonmonograph because FDA had not received any data to demonstrate antiperspirant effectiveness for more than 24 hours according to the Panel's criteria (68 FR 34273 at 34278).

## II. Partial Stay of Part 350

Following publication of the antiperspirant FM, a drug manufacturer and an association representing manufacturers submitted citizen petitions disagreeing with FDA's decision to limit the enhanced duration claim to 24 hours (Refs. 1 and 2). Neither petition contained any effectiveness testing data to support enhanced duration claims beyond 24 hours. However, the manufacturer subsequently submitted such data from two studies (Ref. 3).

FDA evaluated the data and the results demonstrate that a roll-on and a solid stick antiperspirant drug product are extra effective for 48 hours duration (i.e., sweat was reduced by at least 30 percent in the majority of subjects up to 48 hours after antiperspirant application). The protocol in the two studies followed FDA's testing guidelines, with no significant deviations from those guidelines. The antiperspirant drug products used in the studies contained an active ingredient at a concentration allowed under the antiperspirant FM (§ 350.10 (21 CFR 350.10)). Thus, FDA believes the study results suggest that FDA's testing guidelines can be used to test enhanced duration claims of up to 48 hours. Accordingly, FDA is staying the enhanced duration claim limitation of 24 hours (in § 350.50(b)(3) and (b)(5)) so that products labeled for enhanced duration claims greater than 24 hours and up to 48 hours can continue to be marketed while FDA reviews additional data on such claims. Manufacturers making such claims for their products should have supporting test data in their files. FDA will consider allowing enhanced duration claims of greater than 48 hours after it receives and evaluates data supporting such claims. This stay will remain in effect until further documentation is provided in a future issue of the **Federal Register**.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice

and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(3)(A). Alternatively, FDAs implementation of this action without opportunity for public comment comes within the good cause exceptions in 5 U.S.C. 553(b)(3)(B) and (d)(3) in that obtaining public comment is impracticable, unnecessary, and contrary to the public interest. FDA is staying the enhanced duration claim limitation of 24 hours in § 350.50(b)(3) and (b)(5) because FDA received and is reviewing data demonstrating an enhanced duration claim greater than 24 hours. FDA is also reopening the administrative record and inviting the submission of additional comments and data related to the effectiveness of antiperspirant drug products for more than 24 hours. Following evaluation of submitted comments and data, FDA will propose amendments to § 350.50(b)(3) and (b)(5) and possibly other sections of part 350. Thus, there will be an opportunity for public comment on enhanced duration claims greater than 24 hours within proposed amendments to part 350. In this final rule, FDA is providing an opportunity for comment on whether this partial stay should be modified or revoked.

## III. Information Requested

In the antiperspirant FM, FDA stated that claims of enhanced duration for more than 24 hours are nonmonograph because FDA did not receive any data to demonstrate antiperspirant effectiveness for more than 24 hours (68 FR 34273 at 34278). Because FDA has now received data demonstrating antiperspirant product effectiveness for 48 hours, FDA is reopening the administrative record to provide for additional submission of data and comments on enhanced duration effectiveness claims for antiperspirant drug products. FDA would like to evaluate additional data demonstrating antiperspirant effectiveness beyond 24 hours before including enhanced duration claims for longer time periods (e.g., 48 hours) in the FM. FDA will only include enhanced duration claims in the FM for time periods for which appropriate data have been submitted to demonstrate effectiveness.

### A. Testing Conditions

To determine whether enhanced duration claims of effectiveness beyond 24 hours are GRASE, FDA strongly encourages manufacturers to submit data that meet the following six conditions. First, studies should be conducted according to the testing guidelines referenced in 21 CFR 350.60, which are on file in the Division of

Dockets Management (see **ADDRESSES**). These guidelines are available at <http://www.fda.gov/cder/otc/index.htm>.

Second, studies should be conducted using antiperspirant drug products that contain active ingredients listed in § 350.10. The test product ingredient and strength must be identified in the data submitted to FDA.

Third, FDA encourages interested parties to conduct enhanced duration effectiveness tests using different active ingredients and dosage forms. These data will demonstrate that enhanced duration claims determined by the testing guidelines are applicable to multiple active ingredient and dosage forms. Fourth, FDA would like data submitted from different testing laboratories. Ideally, the same antiperspirant drug product will be tested at multiple laboratories, to validate the reproducibility of the testing results.

Fifth, FDA believes that the test subject panel composition should reflect consumer demographics (Ref. 4) although the testing guidelines do not specify the panel composition. Although the testing guidelines do not specify the panel composition, FDA would like data from roughly equal numbers of men and women. It would also be informative if submitted studies also identified race or ethnicity of subjects. FDA would like to assure that the submitted study results demonstrate enhanced duration of effectiveness for the entire consumer population, not just a subset of the population.

Sixth, FDA is interested in reviewing data for antiperspirant drug products with standard effectiveness as well as products with extra effectiveness. FDA would like to determine whether enhanced duration claims are limited to extra effective antiperspirant drug products or whether enhanced duration claims also apply to standard (effectiveness) antiperspirant drug products.

### B. Labeling Questions

In addition to data demonstrating an enhanced duration claim beyond 24 hours, FDA requests comments on labeling related to products having such a claim. Currently, products demonstrating enhanced duration are allowed to contain a statement such as "last 24 hours" (§ 350.50(b)(3) and (b)(5)) to inform consumers about the duration of effectiveness. However, there are no specific direction statements about how frequently to apply the product. The directions in § 350.50(d) simply state "apply to underarms only." For products demonstrating effectiveness for greater

than 24 hours (one day), additional or alternative labeling may be necessary. FDA would like comments regarding labeling, such as the following:

- How often to apply the product,
- The effect of bathing or showering before the duration of effect period ends, and
- Whether any other special labeling should apply to products with a duration of effect greater than 24 hours.

FDA also requests comments on whether there should be any limit on the enhanced duration claim and whether there are any potential safety issues if a product with enhanced duration of action is reapplied more frequently than directed (e.g., an antiperspirant labeled as providing 48 hours of sweat protection applied every 24 hours).

#### IV. Analysis of Impacts

The economic impact of the FM was discussed in the final rule (68 FR 34273 at 34289). This partial stay of the labeling claims for enhanced duration in § 350.50(b)(3) and (b)(5) does not change the economic impact on industry described in the final rule.

FDA has examined the impacts of this final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million (adjusted annually for inflation). The current inflation adjusted statutory threshold is about \$110 million.

FDA concludes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order and in these two statutes. The final rule is not a significant regulatory action as defined by the Executive order and so is not

subject to review under the Executive order. FDA has determined that the final rule does not have a significant economic impact on a substantial number of small entities. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this final rule, because this final rule is not expected to result in any 1-year expenditure that would exceed \$100 million adjusted for inflation.

The purpose of this final rule is to stay the effective date of one part of the antiperspirant FM: The limitation of the enhanced duration claim to 24 hours (§ 350.50(b)(3) and (b)(5)). The partial stay will allow manufacturers who have supporting data to include greater than 24 hour duration claims in the labeling of OTC antiperspirant drug products while FDA evaluates data to support such claims using FDA's effectiveness test. FDA has learned that one manufacturer has approximately 40 stockkeeping units (SKUs) and another manufacturer has several SKUs with labels indicating effectiveness for more than 24 hours. These manufacturers will not have to revise the existing "enhanced duration" portion of their labeling when the FM becomes effective on December 9, 2004. Accordingly, FDA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

#### V. Paperwork Reduction

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

#### VI. Environmental Impact

FDA has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, FDA has concluded that the rule does not

contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

#### VIII. Request for Comments

Interested persons may submit written or electronic comments regarding this rule to the Division of Dockets Management (see **ADDRESSES**). Three copies of all written comments are to be submitted. Individuals submitting written comments or anyone submitting electronic comments may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

#### IX. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) under Docket No. 1978N–0064 and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. PRC1.
2. Comment No. PRC2.
3. Comment No. SUP4.
4. Comment No. C54.

#### X. Authority

This final rule (partial stay) is issued under sections 201, 501, 502, 503, 505, 510, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, and 371) and under authority delegated to the Commissioner of Food and Drugs.

Dated: October 6, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04–23106 Filed 10–14–04; 8:45 am]

**BILLING CODE 4160–01–S**

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Parts 4022 and 4044

#### Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.



**SUMMARY:** The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in November 2004. Interest assumptions are also published on the PBGC's Web site (<http://www.pbgc.gov>).

**DATES:** November 1, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

**SUPPLEMENTARY INFORMATION:** The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to part 4022).

Accordingly, this amendment (1) adds to Appendix B to part 4044 the interest

assumptions for valuing benefits for allocation purposes in plans with valuation dates during November 2004, (2) adds to Appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during November 2004, and (3) adds to Appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during November 2004.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 3.80 percent for the first 20 years following the valuation date and 5.00 percent thereafter. These interest assumptions represent a decrease (from those in effect for October 2004) of 0.20 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 2.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for October 2004) of 0.25 percent for the period during which a benefit is in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that

the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during November 2004, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

**List of Subjects**

*29 CFR Part 4022*

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

*29 CFR Part 4044*

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

**PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS**

■ 1. The authority citation for part 4022 continues to read as follows:

**Authority:** 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 133, as set forth below, is added to the table. (The introductory text of the table is omitted.)

**Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments**

\* \* \* \* \*

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i <sub>1</sub>	i <sub>2</sub>	i <sub>3</sub>	n <sub>1</sub>	n <sub>2</sub>
*	*	*	*		*	*	*	
133	11-1-04	12-1-04	2.75	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 133, as set forth below, is added to the table. (The introductory text of the table is omitted.)

**Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments**

\* \* \* \* \*



Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		$i_1$	$i_2$	$i_3$	$n_1$	$n_2$
*	*	*	*	*	*	*	*	*
133	11-1-04	12-1-04	2.75	4.00	4.00	4.00	7	8

#### PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

**Authority:** 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.  
 ■ 5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

#### Appendix B to Part 4044—Interest Rates Used To Value Benefits

\* \* \* \* \*

For valuation dates occurring in the month—	The values of $i_t$ are:					
	$i_t$	for $t =$	$i_t$	for $t =$	$i_t$	for $t =$
*	*	*	*	*	*	*
November 2004 .....	.0380	1-20	.0500	>20	N/A	N/A

Issued in Washington, DC, on this 12th day of October 2004.

**Joseph H. Grant,**

*Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.*

[FR Doc. 04-23180 Filed 10-14-04; 8:45 am]

BILLING CODE 7708-01-P

#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Part 64

[CC Docket No. 96-146; RM-8783; ENF-95-20; FCC 04-162]

#### Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services, and Toll-free Number Usage; Truth-in-Billing and Billing Format

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rules.

**SUMMARY:** In this document, the Commission closes CC Docket 96-146, a rulemaking initiated in 1996 to implement portions of the Telecommunications Act of 1996 (1996 Act) governing pay-per-call and related information services. This docket was opened specifically for the purpose of implementing section 228 as amended by the 1996 Act. In 1996, the Commission released an *Order and Notice of Proposed Rulemaking* that adopted new rules, incorporating much of the statute verbatim, and completed

implementation of the new provision of section 228. In the years since the rules took effect, the shape of the pay-per-call industry, technology in general, and regulatory perspectives have changed considerably. For reasons of administrative efficiency, the Commission now closes that docket. Furthermore, in this document, the Commission denies a related application for review, dismisses a petition to initiate a rulemaking, and corrects a word error in the existing rules.

**DATES:** Effective July 16, 2004.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Ruth Yodaiken, of the Consumer & Government Affairs Bureau at (202) 418-2512 (voice), or e-mail [ruth.yodaiken@fcc.gov](mailto:ruth.yodaiken@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum Opinion and Order (MO&O), *Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996, Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, Florida Public Service Commission Petition to Initiate Rulemaking to Adopt Additional Safeguards; Application for Review of Advisory Ruling Regarding Directly Dialed Calls to International Information Services*, CC Docket No.

96-146, RM 8783, ENF-95-20; FCC 04-162, adopted July 1, 2004, and released July 16, 2004. This MO&O document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4). On July 16, 2004, the Commission also released a Notice of Proposed Rulemaking (NPRM), *Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996; Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services, and Toll-free Number Usage; Truth-in-Billing and Billing Format*, CC Docket Nos. 96-146 and 98-170, CG Docket No. 04-244; FCC 04-162, that contains proposed information requirements. The full text of this document is available on the Commission's website Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov), or call the Consumer & Governmental Affairs

Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This *MO&O* can also be downloaded in Word and Portable Document Format (PDF) at <http://www.fcc.gov/cgb/policy/paypercall.html>.

## Synopsis

### A. WKP Application for Review

In 1995, WKP Communications, Inc. (WKP) filed an *Application for Review* of a staff interpretation given in the Marlowe Letter. (*Direct Dialed Calls to International Information Services*, File No. ENF 95-20 (October 5, 1995) (WKP Application for Review). See also *WKP Communications Files Application for Review of Common Carrier Bureau Staff Ruling Regarding Provisions of Interstate Information Services at Tariffed Rates*, 10 FCC Rcd 11518 (rel. October 24, 1995).) The letter gave an opinion of how, among other things, § 201(b) and 228 would apply to several hypothetical scenarios where international long distance service providers would be used to transmit information and entertainment services. (*Marlowe Letter*, 10 FCC Rcd 10945.) The scenarios described involved the transmission of calls by an authorized carrier at a tariffed rate through 10XXX dialing sequence, a 500 number, and a 700 number. Both the Marlowe Letter and WKP's *Application for Review* were drafted before the 1996 Act had gone into effect, and there was still an exemption for tariffed services under § 228. (The exemption for tariffed services was removed by the 1996 Act.) In addition to Congress' removal of the tariffed exemption, the Commission has spoken twice on the issue of revenue sharing in general, first in the 1996 *Order & NPRM* and more recently in the chat-line orders discussed above. Since filing its initial *Application for Review*, WKP has done nothing to update its *Application for Review*. Further, WKP has apparently ceased acting as a common carrier and Commission staff has been unsuccessful in reaching WKP to determine whether it wanted to pursue the *Application for Review*. (Since 1998, all common carriers have been required to file 499A forms, but there is no record of WKP having done so. The law firm that filed the petition on behalf of WKP provided Commission staff with the last known address of WKP, and a letter sent to that address in September 2003 was returned as undeliverable.) The Commission, therefore, dismisses this application as moot. We note that some of the general topics raised in the *Application for Review*, which went well beyond the

scope of the letter, are raised in the *NPRM*.

### B. Florida Public Service Petition for Rulemaking

In 1995, the Florida Public Service Commission (FPSC) filed a Petition for Rulemaking with the Commission proposing, among other things, the establishment of a service to allow subscribers to have bill blocking, which would not be dependant upon the use of 900 numbers. (*Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act*, Florida Public Service Commission Petition to Initiate Rulemaking to Adopt Additional Safeguards, RM-8783, filed December 8, 1995 (FPSC Petition). See also *Office of Public Affairs, Reference Operations Division, Petitions for Rulemaking File*, Report No. 2127, Public Notice, April 1, 1996; Florida Public Service Commission 1996 Reply, RM-8783; and Florida Public Service Commission 1996 Comment.) In January 2004, the FPSC filed a notice withdrawing their petition. (*Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act*, Florida Public Service Commission Notice of Withdrawal of Petition to Initiate Rulemaking, filed January 26, 2004.) Therefore, we dismiss the Petition for Rulemaking.

### C. Closing CC Docket 96-146

Since the Commission released the 1996 *Order & NPRM* in CC Docket No. 96-146, the audiotext information services market, as well as related regulatory environment and technology have undergone significant changes. As noted earlier, the number of assigned 900 numbers, dropped from a peak of 447 in 1999 to 206 by the end of 2002 and many are no longer used by end users. As noted above, many carriers decline to provide transport or bill for 900 numbers. Consumers complain about different problems, as discussed above. Regulatory changes included detariffing, slamming verification, and adjudication of formal complaints by the FCC and outside agencies. Instant credit and electronic transactions are now common in e-commerce transactions.

As the comment cycle for the 1996 *Order & NPRM* was completed before the rules actually took effect, the comments from 1996 provided no evidence of the impact of those rules. CGB's effort to refresh the record in this docket in 2003 was not met with extensive comment, nor a full range of views. Only 15 parties, most in the pay-per-call industry, submitted comments, replies, or *ex parte* filings, contrasting to

the more varied 38 parties that had filed comments in response to the 1996 *Order & NPRM*. Several of the parties argued that the record was too stale to reflect accurately the current market and regulatory environment.

It is clear that the subject of this proceeding has changed significantly from when the 1996 *Order & NPRM* was released and when most comments were filed. While there are items in the comments and proposals that are still relevant, it would be impossible without further comment and review to ascertain which material is dated and which material is still viable. In the interest of administrative efficiency, therefore, we now close and terminate CC Docket No. 96-146. To the extent that parties believe portions of their 1996 comments are still relevant, parties should resubmit the relevant parts of such comments, if any, in this new docket. Parties refiling portions of comments are asked to do so with particularity. (Parties should only refile the particular pages from their comments that they believe to still be relevant.) Comments filed in 2003 in response to the *Notice* need not be filed again, as they will be included in this new rulemaking.

### D. Correction of Word Error

The rules as adopted in 1996 contain a minor error in wording which is being corrected by this *MO&O*. In § 64.154(c)(2)(vi), the word "up" was omitted. We correct this sentence to read: "Clearly states that the caller can hang up at or before the end of the introductory message without incurring any charge whatsoever."

### Ordering Clauses

Accordingly, pursuant to the authority contained in sections 1-4, 201(b), 228 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151-154, 201(b), 228 and 303(r); and 47 CFR 64.1501-1515 of the Commission's rules, this *Memorandum Opinion and Order* is adopted.

The proceedings in CC Docket No. 96-146 are terminated, and the docket is closed.

The *Petition for Rulemaking* filed by the Florida Public Service Commission on December 8, 1995; and the *Application for Review* filed by WKP Communications, Inc., on October 5, 1995 are dismissed. 47 CFR 64.1504 (c) is amended as set forth in the Final Rules.

The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Memorandum Opinion and Order*

to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

### Rule Change

■ For the reasons discussed in the preamble, the Federal Communications Commission is amending 47 CFR part 64 as follows:

### PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

**Authority:** 47 U.S.C. 154, 254(k); secs. 403(b) (2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

■ 2. Section 64.1504 is amended by revising paragraph (c)(2)(vi) to read as follows:

#### § 64.1504 Restrictions on the use of toll-free numbers.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(vi) Clearly states that the caller can hang up at or before the end of the introductory message without incurring any charge whatsoever.

\* \* \* \* \*

[FR Doc. 04–23191 Filed 10–14–04; 8:45 am]

BILLING CODE 6712–01–P

### DEPARTMENT OF TRANSPORTATION

#### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA–2003–14711]

RIN 2127–AI49

#### Federal Motor Vehicle Safety Standards; Child Restraint Anchorage Systems

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This document makes permanent the temporary exclusion issued by the agency in an interim final rule published on May 8, 2003 to exclude funeral coaches (as defined in the rule) from the requirements of Federal Motor Vehicle Safety Standard No. 225, “Child restraint anchorage systems.”

**DATES:** This rule is effective November 15, 2004.

**ADDRESSES:** Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

**Privacy Act:** Anyone is able to search the electronic form of all petitions received into any of our dockets by the name of the individual submitting the petition (or signing the petition, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** For non-legal questions, Mike Huntley, NHTSA Office of Crashworthiness Standards, Special Vehicle and Systems Division, 400 Seventh St., SW., Washington, DC 20590 (telephone 202–366–0029). For legal questions, Deirdre Fujita, NHTSA Office of Chief Counsel, 400 Seventh St., SW., Washington, DC 20590 (telephone 202–366–2992).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On March 5, 1999, NHTSA published a final rule establishing a new Federal motor vehicle safety standard that required motor vehicle manufacturers to install child restraint anchorage systems that are standardized and independent of the vehicle seat belts.<sup>1</sup> (64 FR 10786) (Docket No. 98–3390, Notice 2) (Federal Motor Vehicle Safety Standard (FMVSS) No. 225, 49 CFR 571.225.) Each system is composed of three anchorages: two lower anchorages and one upper anchorage. The lower anchorages are two 6 millimeter (mm) round steel bars fastened to the vehicle 720 mm apart and located at the intersection of the vehicle seat cushion and seat back. The upper anchorage is a permanent structure to which the hook of a child restraint upper tether may be attached for the purpose of transferring load from the child restraint to the vehicle structure.

##### II. Petition for Rulemaking From Accubuilt on Funeral Coaches

FMVSS No. 225 requires a vehicle to be equipped with tether anchorages in front passenger seating positions if (1) the vehicle lacks a rear designated

seating position (see S4.3(b)(3) and S4.4(c)), and (2) there is an air bag and no air bag on-off switch in the front passenger seating position. Accubuilt, a final-stage manufacturer of funeral coaches, submitted a petition for rulemaking requesting NHTSA to exclude funeral coaches from the requirement. Accubuilt stated that: “[s]ince a Funeral Coach is a single purpose vehicle, transporting a body and casket, children do not ride in the front seat.”

##### III. Interim Final Rule on Accubuilt Request

On May 8, 2003, NHTSA published an interim final rule in the **Federal Register** (68 FR 24644; Docket 14711) which temporarily excluded “funeral coaches” from the requirements of FMVSS No. 225. We limited the exclusion to a one-year period, to receive and evaluate comments on the exclusion and to determine whether to make the exclusion permanent.

We agreed with Accubuilt that it was unlikely that a funeral coach that had no rear seats would carry children in the front seat. We believed that the persons riding in the front seat of this type of vehicle would be the driver and an attendant to the casket, not a child. On the other hand, the agency believed that it was conceivable that a child may be carried in a funeral coach that carried passengers in the rear. Thus, the exclusion of funeral coaches was limited to funeral coaches that had only one row of occupant seats (the front row).

To implement this limited exclusion, we added a definition of “funeral coach” to the standard. Accubuilt had stated that a funeral coach is a vehicle equipped with heavy duty components to handle the additional mass of a body and casket, and that manufacturers of funeral coaches conform to an industry standard that requires “front and rear stops” in the interior of the coach to keep the casket stationary. Based on the above information, we defined “funeral coach” as “a vehicle that contains only one row of occupant seats, is designed exclusively for transporting a body and casket and that is equipped with features to secure a casket in place during operation of the vehicle.” Comments were requested on the definition and on the exclusion of funeral coaches from FMVSS No. 225.

##### IV. Agency Decision

NHTSA did not receive any comments on the document. The agency has decided to make permanent the exclusion issued in the May 8, 2003 interim final rule. This amendment

<sup>1</sup> See 64 FR 47566; August 31, 1999 (Docket No. NHTSA–99–6160) and 65 FR 46628; July 31, 2000 (Docket No. NHTSA–7648) and 68 FR 38208; June 27, 2003 (Docket No. NHTSA–15438) for later amendments of the rule.

permanently excludes “funeral coaches” from the requirements of FMVSS No. 225 and adopts a definition of that vehicle type for the reasons provided in the May 2003 final rule.

This rulemaking relieves a restriction on a group of small manufacturers and has no negative safety consequences. Accordingly, NHTSA finds for good cause that an effective date of less than 180 days from the date of publication of this notice is in the public interest.

## V. Rulemaking Analyses and Notices

### *Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures*

This rulemaking document was not reviewed under E.O. 12866, “Regulatory Planning and Review.” The agency has considered the impact of this rulemaking action under the Department of Transportation’s regulatory policies and procedures, and has determined that it is not “significant” under them. This document amends FMVSS No. 225 to exclude funeral coaches from the requirements of the standard on a permanent basis. There are no additional costs associated with this final rule.

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (Public Law 96–354), as amended, requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This final rule relieves a restriction on manufacturers of funeral coaches and does not impose any new obligations or requirements.

### *Executive Order 13132 (Federalism)*

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 13132, and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule will not have any substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

### *National Environmental Policy Act*

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of

this action will not have any significant impact on the quality of the human environment.

### *Executive Order 12778 (Civil Justice Reform)*

This rule will not have any retroactive effect. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This rule will not preempt the states from adopting laws or regulations on the same subject, except that it will preempt a state regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

### List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ For the reasons set forth in the preamble, NHTSA amends 49 CFR part 571 as follows:

### PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for Part 571 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

■ 2. In 49 CFR 571.225, S2 and the definition of “funeral coach” in S3 are republished to read as follows:

#### § 571.225 Standard No. 225; Child restraint anchorage systems.

\* \* \* \* \*

S2. *Application.* This standard applies to passenger cars; to trucks and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 3,855 kilograms (8,500 pounds) or less; and to buses (including school buses) with a GVWR of 4,536 kg (10,000 lb) or less. This standard does not apply to walk-in van-type vehicles, vehicles manufactured to be sold exclusively to the U.S. Postal Service, shuttle buses, and funeral coaches.

#### S3. *Definitions.*

\* \* \* \* \*

*Funeral coach* means a vehicle that contains only a front row of occupant seats, is designed exclusively for transporting a body and casket and that is equipped with features to secure a casket in place during operation of the vehicle.

Issued on: October 5, 2004.

**Jeffrey W. Runge,**  
*Administrator.*

[FR Doc. 04–23135 Filed 10–14–04; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 222 and 223

[Docket No.; I.D. 100404B]

RIN 0648–AS79

### Sea Turtle Conservation; Shrimp Trawling Requirements

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule.

**SUMMARY:** NMFS issues this temporary authorization for a period of 30 days, to allow the use of limited tow times by shrimp trawlers as an alternative to the use of Turtle Excluder Devices (TEDs) in the state waters of Alabama and Mississippi, and the state waters of Louisiana from the Mississippi/Louisiana border to a line at 90° 03' 00" West longitude (approximately the west end of Grand Isle). This action is necessary because excessive debris as a result of Hurricane Ivan may affect fishermen's ability to use TEDs effectively. When a TED is clogged with debris, it can no longer catch shrimp effectively nor can it effectively exclude turtles.

**DATES:** Effective from October 12, 2004 through November 12, 2004.

**ADDRESSES:** Requests for copies of the Environmental Assessment on this action should be addressed to the Chief, Marine Mammal Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Bob Hoffman, 727–570–5312, or Barbara A. Schroeder, 301–713–1401.

#### SUPPLEMENTARY INFORMATION:

#### Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green

(*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Sea turtles are incidentally taken and killed as a result of numerous activities, including fishery trawling activities in the Gulf of Mexico and along the Atlantic seaboard. Taking endangered sea turtles is prohibited under the ESA, subject to limited exceptions. Through section 4(d) of the ESA, NMFS implemented regulations at 50 CFR 223.206 extending the taking prohibition to threatened sea turtles. Exceptions to the taking prohibition are also authorized according to the terms and conditions of a biological opinion issued under section 7 of the ESA, or according to an incidental take permit issued under section 10 of the ESA. The incidental taking of turtles during shrimp or summer flounder trawling is exempted from the taking prohibition of section 9 of the ESA if the conservation measures specified in the sea turtle conservation regulations (50 CFR 223) are followed. The regulations require most shrimp trawlers and summer flounder trawlers operating in the southeastern United States (Atlantic area, Gulf area, and summer flounder sea turtle protection area, see 50 CFR 223.206) to have a NMFS-approved TED installed in each net that is rigged for fishing to provide for the escape of sea turtles. TEDs currently approved by NMFS include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, the flounder TED, and one type of soft TED the Parker soft TED (see 50 CFR 223.207).

TEDs incorporate an escape opening, usually covered by a webbing flap, that allows sea turtles to escape from trawl nets. To be approved by NMFS, a TED design must be shown to be 97 percent effective in excluding sea turtles during testing based upon specific testing protocols (50 CFR 223.207(e)(1)). Most approved hard TEDs are described in the regulations (50 CFR 223.207(a)) according to generic criteria based upon certain parameters of TED design, configuration, and installation, including height and width dimensions of the TED opening through which the turtles escape.

The regulations governing sea turtle take prohibitions and exemptions provide for the use of limited tow times as an alternative to the use of TEDs for vessels with certain specified characteristics or under certain special circumstances. The provisions of 50 CFR 223.206(d)(3)(ii) specify that the NOAA Assistant Administrator for Fisheries (AA) may authorize

compliance with tow time restrictions as an alternative to the TED requirement if the AA determines that the presence of algae, seaweed, debris, or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable. The provisions of 50 CFR 223.206(d)(3)(i) specify the maximum tow times that may be used when tow-time limits are authorized as an alternative to the use of TEDs. The tow times may be no more than 55 minutes from April 1 through October 31 and no more than 75 minutes from November 1 through March 31, as measured from the time that the trawl doors enter the water until they are removed from the water. These tow time limits are designed to minimize the level of mortality of sea turtles that are captured by trawl nets not equipped with TEDs.

#### Recent Events

On September 27, 28, and 29, 2004, the NOAA Fisheries' Southeast Regional Administrator received requests from the Marine Fisheries Division of the Alabama Department of Conservation and Natural Resources (ADCNR), the Mississippi Department of Marine Resources (MDMR), and the Louisiana Department of Wildlife and Fisheries (LDWF), respectively, to allow the use of tow times as an alternative to TEDs in state waters because of excessive storm-related debris on the fishing grounds as a result of Hurricane Ivan. After an investigation, the ADCNR, MDMR, and LDWF have determined that this debris is affecting the fishermen's ability to use TEDs effectively. When a TED is clogged with debris, it can no longer catch shrimp effectively nor can it effectively exclude turtles. Alabama, Mississippi, and Louisiana have stated that their marine enforcement agencies will increase patrols to enforce the tow time restrictions.

NOAA Fisheries gear technicians interviewed fishermen and surveyed parts of the affected areas in Alabama, Mississippi, and Louisiana. The interviews and surveys conducted by the gear technicians indicate that problems with debris exist in Alabama, Mississippi, and Louisiana state waters that are likely to affect the effectiveness of TEDs.

#### Special Environmental Conditions

The AA finds that debris washed into the state waters of Alabama and Mississippi and the state waters of Louisiana from the Mississippi/Louisiana border to a line at 90° 03' 00" West longitude (approximately the west end of Grand Isle) by Hurricane Ivan has

created special environmental conditions that make trawling with TED-equipped nets impracticable. Therefore, the AA issues this temporary rule to authorize the use of restricted tow times as an alternative to the use of TEDs in the state waters of Alabama and Mississippi and the state waters of Louisiana from the Mississippi/Louisiana border to a line at 90° 03' 00" West longitude (approximately the west end of Grand Isle) for a period of 30 days. Through October 31, 2004, a shrimp trawler utilizing this authorization must limit tow times to no more than 55 minutes, measured from the time trawl doors enter the water until they are completely retrieved from the water. From November 1, 2004, through November 12, 2004, unless terminated earlier, tow times must be limited to no more than 75 minutes measured from the time trawl doors enter the water until they are retrieved from the water. The marine patrols of the affected states are continuing to monitor the situation and will cooperate with NMFS in determining the extent of the ongoing debris problem in this area. Moreover, the affected states have stated that their marine patrols will enforce the restricted tow times. Ensuring compliance with tow time restrictions is critical to effective sea turtle protection, and the commitment from the affected states marine patrols to enforce tow time restrictions is an important factor enabling NMFS to issue this authorization.

#### Continued Use of TEDs

NMFS encourages shrimp trawlers in the affected areas to continue to use TEDs if possible, even though they are authorized under this action to use restricted tow times. The use of TEDs negates the tow time restrictions. NMFS studies have shown that the problem of clogging by seagrass, algae, or by other debris is not unique to TED-equipped nets. When fishermen trawl in problem areas, they may experience clogging with or without TEDs. A particular concern of fishermen, however, is that clogging in a TED-equipped net may hold open the turtle escape opening and increase the risk of shrimp loss. On the other hand, TEDs also help exclude certain types of debris and allow shrimpers to conduct longer tows.

NMFS' gear experts have provided several general operational recommendations to fishermen to maximize the debris exclusion ability of TEDs that may allow some fishermen to continue using TEDs without resorting to restricted tow times. To exclude debris, NMFS recommends the use of hard TEDs made of either solid rod or

of hollow pipe that incorporate a bent angle at the escape opening, in a bottom-opening configuration. In addition, the installation angle of a hard TED in the trawl extension is an important performance element in excluding debris from the trawl. High installation angles can result in debris clogging the bars of the TED; NMFS recommends an installation angle of 45°, relative to the normal horizontal flow of water through the trawl, to optimize the TED's ability to exclude turtles and debris. Furthermore, the use of accelerator funnels, which are allowable modifications to hard TEDs, is not recommended in areas with heavy amounts of debris or vegetation. Lastly, the webbing flap that is usually installed to cover the turtle escape opening may be modified to help exclude debris quickly: the webbing flap can either be cut horizontally to shorten it so that it does not overlap the frame of the TED or be slit in a fore-and-aft direction to facilitate the exclusion of debris. The use of the double cover flap TED will also aid in debris exclusion.

All of these recommendations represent legal configurations of TEDs for shrimpers fishing in the affected areas. This action does not authorize any other departure from the TED requirements, including any illegal modifications to TEDs. In particular, if TEDs are installed in trawl nets, they may not be sewn shut.

#### Alternative to Required Use of TEDs

The authorization provided by this rule applies to all shrimp trawlers that would otherwise be required to use TEDs in accordance with the requirements of 50 CFR 223.206(d)(2) who are operating in the state waters of Alabama and Mississippi, and the state waters of Louisiana from the Mississippi/Louisiana border to a line at 90° 03' 00" West longitude (approximately the west end of Grand Isle) for a period of 30 days. Instead of the required use of TEDs, shrimp trawlers may opt to comply with the sea turtle conservation regulations by using restricted tow times.

#### Alternative to Required Use of TEDs; Termination

The AA, at any time, may withdraw or modify this temporary authorization to use tow time restrictions in lieu of TEDs, through publication of a notice in the **Federal Register**, if necessary to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the AA may modify the affected area or impose any necessary additional or more stringent measures, including more restrictive

tow times, synchronized tow times, or withdrawal of the authorization if the AA determines that the alternative authorized by this rule is not sufficiently protecting turtles or no longer needed. The AA may also terminate this authorization if information from enforcement, state authorities, or NMFS indicate compliance cannot be monitored effectively. This authorization will expire automatically on November 12, 2004, unless it is explicitly extended through publication in the **Federal Register**.

#### Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The AA has determined that this action is necessary to respond to an emergency situation to allow more efficient fishing for shrimp, while providing adequate protection for endangered and threatened sea turtles pursuant to the ESA and applicable regulations.

Pursuant to 5 U.S.C. 553(b)(3)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this temporary rule as such procedures are impracticable and contrary to the public interest. Unusually high amounts of debris are creating special environmental conditions that make trawling with TED-equipped nets impracticable. Providing notice and comment would prevent the agency from providing relief within the necessary time frame because shrimp loss and sea turtle lethal take is likely to occur in the interim period prior to finalizing this temporary rule. These resources would be impacted unnecessarily through a notice and comment period process.

For the same reasons, the AA finds that there is good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553(d)(3). The temporary rule grants a short-term exemption to the requirement to use TEDs, and, therefore, allows fishermen to choose between deploying TEDs or using tow-times. This temporary rule relieves a restriction and is not subject to a 30-day delay in effective date, pursuant to 5 U.S.C. 553(d)(1). NMFS is making the rule effective October 12, 2004 through November 12, 2004.

Since prior notice and an opportunity for public comment are not required to be provided for this action by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.* are inapplicable.

The AA prepared an Environmental Assessment (EA) for this rule. Copies of the EA are available (see **ADDRESSES**).

Dated: October 12, 2004.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 04-23190 Filed 10-12-04; 3:54 pm]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 040618188-4265-02; I.D. 061404A]

**RIN 0648-AS26**

#### Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Correction

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects a final rule that implemented Amendment 16-3 to the Pacific Coast Groundfish Fishery Management Plan (FMP). This document corrects amendatory instruction 2.

**DATES:** Effective October 28, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jamie Goen (Northwest Region, NMFS), phone: (206) 526-4646; fax: 206-526-6736; and email: [jamie.goen@noaa.gov](mailto:jamie.goen@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

This final rule also is accessible via the Internet at the Office of the **Federal Register's** website at [www.gpoaccess.gov/fr/index/html](http://www.gpoaccess.gov/fr/index/html) and at the NMFS Northwest Region website at [www.nwr.noaa.gov/1sustfsh/gfsh/gdfsh/gdfsh01.html](http://www.nwr.noaa.gov/1sustfsh/gfsh/gdfsh/gdfsh01.html).

##### Background

NMFS published a final rule implementing Amendment 16-3 on September 28, 2004 (69 FR 57874). That final rule updated the list of rockfish species defined in the Code of Federal Regulations to match that listed in the FMP and corrected dusty rockfish to read dusky rockfish. In that final rule, dusty rockfish was mistakenly listed as dusky rockfish in the instruction language for which species was to be removed. This document corrects that amendatory instruction language.

**Correction**

As published, the final rule FR Doc. 04-21691, September 28, 2004, (69 FR 57874), contains an error and needs to be corrected.

**§ 660.302 [Corrected]**

1. On page 57881, in the third column, amendatory instruction 2 is corrected to read “In § 660.302, in the definition of “Groundfish,” under

“Rockfish:” remove “dusty rockfish, *S. ciliatus*,” and add “chameleon rockfish, *S. phillipsi*,” “dwarf-red rockfish, *S. rufinanus*,” “dusky rockfish, *S. ciliatus*,” “freckled rockfish, *S. lentiginosus*,” “half-banded rockfish, *S. semicinctus*,” “pinkrose rockfish, *S. simulator*,” “pygmy rockfish, *S. wilsoni*,” and “swordspine rockfish, *S. ensifer*” in alphabetical order to read as follows:”

All other information previously published remains the same.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 7, 2004.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

[FR Doc. 04-23062 Filed 10-14-04; 8:45 am]

**BILLING CODE 3510-22-S**

# Proposed Rules

Federal Register

Vol. 69, No. 199

Friday, October 15, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1280

[No. LS-04-06]

#### Lamb Promotion and Research Program: Procedures for the Conduct of a Referendum

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Commodity Promotion, Research, and Information Act of 1996 (Act) authorizes a program of promotion, research, and information to be developed through the promulgation of the Lamb Promotion, Research, and Information Order (Order). The Act requires that the Secretary of Agriculture (Secretary) conduct a referendum among persons subject to assessments who, during a representative period established by the Secretary, have engaged in the production, feeding, or slaughter of lambs. The Act further requires that a referendum be conducted not later than 3 years after assessments first begin to determine whether the Order should be continued. Assessments began on July 1, 2002. This proposed rule establishes procedures the Department of Agriculture (USDA) would use in conducting the required referendum as well as future referendums. Eligible persons would be provided the opportunity to vote during a specified period announced by USDA at the county Farm Service Agency (FSA) office where FSA maintains and processes the person's administrative farm records. For those eligible persons not participating in FSA programs, the opportunity to vote would be provided at the county FSA office serving the county where the person owns or rents land. A person engaged in the production, feeding, or slaughter of lambs in more than one county would vote in the county FSA office where the

person does most of his or her business. For the program to continue, it must be approved by at least a majority of those persons voting for approval who are engaged in the production, feeding, or slaughter of lambs and who also represent a majority of the volume of lambs produced, fed, or slaughtered.

**DATES:** Written comments must be received by November 4, 2004. Pursuant to the Paperwork Reduction Act of 1995 (PRA), comments on the information collection burden that would result from this proposal must be received by December 14, 2004.

**ADDRESSES:** Send comments to Kenneth R. Payne, Chief; Marketing Programs Branch; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA, Room 2638-S; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC. 20250-0251. Comments may also be sent electronically to

[LambComments@usda.gov](mailto:LambComments@usda.gov), <http://www.regulations.gov>, or by facsimile at 202/720-1125. All comments should reference the docket number LS-04-06, the date, and the page number of this issue of the **Federal Register**. Comments received may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, or via the Internet at <http://www.ams.usda.gov/lsg/mpb/rp-lamb.htm>.

Pursuant to PRA, send comments regarding the accuracy of the burden estimate and ways to minimize the burden. Comments concerning PRA should also be sent to the Desk Officer for Agriculture; Office of Information and Regulatory Affairs; Office of Management and Budget; New Executive Office Building; 725 17th Street, NW., Room 725; Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Payne, Chief, Marketing Programs Branch on 202/720-1115, fax 202/720-1125, or by e-mail at [Kenneth.Payne@usda.gov](mailto:Kenneth.Payne@usda.gov) or Phil Brockman, USDA, FSA, DAFO, on 202/690-8034, fax 202/720-5900, or by e-mail on [Phil.Brockman@usda.gov](mailto:Phil.Brockman@usda.gov).

Eligible voters can determine the location of county FSA offices by contacting (1) the nearest county FSA office, (2) the State FSA office, or (3) through an online search of FSA's Web site at <http://www.fsa.usda.gov/pas/default.asp>. From the options available

on this Web page select "Your local office," click on your State, and click on the map to select a county.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order (E.O.) 12866 for this action.

##### Executive Order 12988

This final rule has been reviewed under E.O. 12988, Civil Justice Reform. It is not intended to have a retroactive effect.

Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the Act, a person subject to the Order may file a petition with USDA stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within 2 years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or carries on business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the final ruling. Service of process in a proceeding may be made on USDA by delivering a copy of the complaint to USDA. If the court determines that the ruling is not in accordance with the law, the court shall remand the matter to USDA with direction to make such ruling as the court determining to be in accordance with the law or to take further action as, in the opinion of the court the law requires. The pendency of a petition filed or an action commenced shall not be operated as a stay of any action authorized by section 520 of the Act to



be taken to enforce, including any rule, Order, or penalty in effect.

### Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic effect of the proposed rule on small entities. The purpose of RFA is to fit the regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

The Act, which authorizes USDA to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996.

Section 518 of the Act provides three options for determining industry approval or continuation of a new research and promotion program. They are: (1) By a majority of those voting; (2) by a majority of the volume of the agricultural commodity voted in the referendum; or (3) by a majority of those persons voting who also represent a majority of the volume of the agricultural commodity voted in the referendum. In addition, § 518 of the Act provides for referendums to ascertain approval of an Order to be conducted either prior to its going into effect or within 3 years after assessments first begin under an Order. As recommended by representatives of the lamb industry, the final Order, which was published in the **Federal Register** on April 11, 2002 (67 FR 17848), provides that USDA conduct a referendum within 3 years after assessments begin and that the continuation of the Order be approved by at least a majority of those persons voting for approval who are engaged in the production, feeding, or slaughter of lambs and who also represent a majority of the volume of lambs produced, fed, or slaughtered.

This proposed rule would establish the procedures USDA would use for the conduct of a nationwide referendum among eligible persons to determine if the Order should be continued. This proposal would add a new subpart that establishes procedures to conduct the initial and future referendum. The new subpart would cover definitions, certification and voting procedures, eligibility, disposition of forms and records, FSA's role, and reporting the results.

There are approximately 67,468 persons engaged in the production, feeding, or slaughtering of lamb who are subject to the program. Most of the lamb producers, seedstock producers, and feeders, would be classified as small

businesses under the criteria established by the Small Business Administration (SBA) (13 CFR 121.201). Most first handlers would not be classified as small businesses. SBA defines small agricultural service firms as those whose annual receipts are less than \$5 million and small agricultural producers are defined as those having annual receipts of less than \$750,000. This number and size data remains the same as it appeared in the earlier analyses for the Order.

The information collection requirements, as discussed below, are minimal. Obtaining a ballot by mail, in-person, facsimile, or via the Internet and completing it in its entirety would not impose a significant economic burden on participants. Accordingly, the Administrator of AMS has determined that this proposed rule will not have a significant economic impact on a substantial number of small business entities.

### Paperwork Reduction Act

In accordance with PRA (44 U.S.C. Chapter 35), this proposed rule announces that AMS is requesting approval from OMB for a new information collection. Once approved, this collection will be merged into 0581-0093.

*Title:* Lamb Promotion, Research, and Information Referendum Ballot.

*OMB Number:* 0581-New.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .03 hours per response.

*Respondents:* Producers, feeders, seedstock producers, and first handlers.

*Estimated Number of Respondents:* 67,486.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 2,025 hours.

*Total Cost:* \$40,492.

*Abstract:* The purpose of this proposed rule is to provide persons subject to the assessment who are engaged in the production, feeding, and slaughtering of lambs the opportunity to vote in a nationwide referendum on the continuation of the Order. Voting in the referendum is voluntary. This proposed rule would require eligible persons to complete a ballot (Form LS-86) in its entirety. Eligible persons subject to the assessment would be required to vote "yes" or "no" to continue the program, vote the number of lambs (volume of production) owned and produced; owned and fed; or slaughtered during a period specified by the Secretary, and provide documentation that shows the person voting engaged in the

production, feeding, or slaughtering of lamb during the representative period determined by the Secretary. The ballot would require the person to sign it certifying that they engaged in the production, feeding, or slaughtering of lambs during a representative period specified by the Secretary and that the volume of production voted is true and accurate to the best of one's knowledge.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of AMS, including whether the information will have practical utility; (2) the accuracy of AMS' estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology.

A 60-day period is provided to comment on the information collection burden. Comments should reference OMB No. 0581-NEW and be sent to [lambcomments@usda.gov](mailto:lambcomments@usda.gov). All comments received will be available for public inspection during regular business hours at the same address. All responses to this proposed rule will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture; Office of Information and Regulatory Affairs; Office of Management and Budget; New Executive Office Building; 725 17th Street, NW., Room 725; Washington, DC 20503.

### Background

The Act (U.S.C. 7411-7425) which became effective on April 4, 1996, authorizes USDA to establish generic programs of promotion, research, and information for agricultural commodities designed to strengthen an industry's position in the marketplace and to maintain and expand existing domestic and foreign markets and uses for agricultural commodities. Pursuant to the Act, a proposed Order on the Lamb Checkoff Program was published in the **Federal Register** on September 21, 2001 (66 FR 48764). The final Order was published in the **Federal Register** on April 11, 2002 (67 FR 17848).

Collection of assessments began on July 1, 2002.

This program is funded primarily by those persons engaged in the production and feeding of lambs in the amount of one-half cent (\$.005) per pound when live lambs are sold. For purposes of this program, the term "lamb" as defined in the Order means, "any ovine animal of any age, including ewes and rams."

First handlers, which means the packer or other person who buys or takes possession of lambs from a producer or feeder for slaughter, including custom slaughter, are assessed an additional \$.30 cents per head purchased for slaughter or slaughtered by such first handler pursuant to a custom slaughter arrangement. Each person who processes or causes to be processed lamb or lamb products of that person's own production and markets the processed products is assessed one-half cent (\$.005) per pound on the live weight at the time of slaughter and is required to pay an additional assessment of \$.30 per head.

Assessment rates may be adjusted in accordance with applicable provisions of the Act and the Order. The Order also requires persons to collect and remit assessments to the Board. Each producer, feeder, or seedstock producer is obligated to pay that portion of the assessment that is equivalent to that producer's, feeder's, or seedstock producer's proportionate share and shall transfer the assessment to the subsequent purchaser. Additionally, a person who is a market agency; *i.e.*, commission merchant, auction market, or broker in the business of receiving such lamb or lamb products for sale on commission for or on behalf of a producer, feeder, or seedstock producer, is required to collect an assessment and transfer the collected assessment on to the subsequent purchaser(s). Such person would not be subject to the assessment and not eligible to participate in the referendum. Any person who processes or causes to be processed lamb or lamb products of that person's own production and markets the processed products will be required to pay an additional assessment and remit the total assessment to the Board. Each first handler who buys or takes possession of lambs from a producer or feeder for slaughter is required to pay an additional assessment and remit the total assessment to the Board.

The Act requires that a referendum to ascertain approval of an Order must be conducted either prior to the Order going into effect or within 3 years after assessments first begin. The industry recommended to USDA that the referendum be conducted no later than

3 years after assessments first begin to determine whether the Order should be continued. Assessments began on July 1, 2002. Thus, USDA is required to conduct a nationwide referendum among persons subject to the assessment by July 1, 2005. The Order would continue if a majority of those persons voting who also represent a majority of the volume of lambs voted in favor of continuing the program. If the continuation of the Order is not approved by eligible persons voting in the referendum, USDA would begin the process of terminating the program.

Eligible persons would be required to complete a ballot in its entirety, vote "yes" or "no" to continue the program, enter the number of lambs (volume of production) owned and produced; owned and fed; or slaughtered during a specific period and provide documentation showing that they engaged in the production, feeding, or slaughter of lambs during the representative period. The person would sign the ballot certifying that they were engaged in the production, feeding, or slaughtering of lambs during a representative period specified by the Secretary and that the volume of production voted is true and accurate to the best of one's knowledge. To vote volume of production, producers and seedstock producers would enter the total number of live domestic lambs owned and produced during calendar year 2004. Feeders would vote the total number of lambs owned and fed during calendar year 2004. First handlers would vote the total number of lambs slaughtered during calendar year 2004. The volume of production must be determined by the person voting prior to completing the ballot and be verifiable. Those persons whose only share in the proceeds of a sale of lambs is a sales commission, handling fee or other service fee or the person acquired ownership of the lambs to facilitate the transfer of ownership of such lambs from the seller to a third party and resold such lambs no later than 10 days from the date on which the person acquired ownership are not considered are producers, seedstock producers, or feeders and not subject to the assessment would be. Such person would not be eligible to participate in the referendum. USDA proposes that the referendum period would be a 4-week period announced by the Secretary and that the representative period would be January 1, 2004, through December 31, 2004. USDA also proposes that the ballots may be cast in person, by facsimile, or by mail-in vote at the appropriate county FSA offices.

Providing participants an opportunity to vote at the county FSA office would give those persons the greatest opportunity to vote in the referendum.

The proposed rule establishes procedures USDA would use in conducting the required referendum as well as future referendums provided under the Act. The proposed rule includes, definitions, eligibility, certification and voting procedures, reporting results, and disposition of the forms and records. FSA would coordinate State and county FSA roles in conducting the referendum by (1) determining producer eligibility, (2) canvassing and counting ballots, and (3) reporting the results. A 20 day comment period is provided for interested persons to comment. This comment period is deemed appropriate in order to conduct a referendum in a timely manner.

#### List of Subjects in 7 CFR Part 1280

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Lamb and Lamb products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that title 7, Part 1280 be amended to read as follows:

#### PART 1280—LAMB PROMOTION, RESEARCH, AND INFORMATION ORDER

1. The authority citation for 7 CFR Part 1280 continues to read as follows:

**Authority:** 7 U.S.C. 7411–7425.

2. In Part 1280, a new subpart E is added to read as follows:

#### Subpart E—Procedures To Request a Referendum

##### Definitions

##### Sec.

- 1280.601 Terms defined.
- 1280.602 Administrator, AMS.
- 1280.603 Administrator, FSA.
- 1280.604 Eligibility.
- 1280.605 Farm Service Agency.
- 1280.606 Farm Service Agency County Committee.
- 1280.607 Farm Service Agency County Executive Director.
- 1280.608 Farm Service Agency State Committee.
- 1280.609 Farm Service Agency State Executive Director.
- 1280.610 Public notice.
- 1280.611 Representative period.
- 1280.612 Volume of production.
- 1280.613 Voting period.

##### Procedures

- 1280.620 General.
- 1280.621 Supervision of the process for conducting a referendum.
- 1280.622 Eligibility.

- 1280.623 Time and place of the referendum.
- 1280.624 Facilities.
- 1280.625 Certifications and referendum ballot form.
- 1280.626 Certification and procedures.
- 1280.627 Canvassing voting ballots.
- 1280.628 Counting ballots.
- 1280.629 FSA county office report.
- 1280.630 FSA State office report.
- 1280.631 Results of the referendum.
- 1280.632 Disposition of records.
- 1280.633 Instructions and forms.
- 1280.634 Confidentiality.

## Subpart E—Procedures To Request a Referendum

### Definitions

#### § 1280.601 Terms defined.

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as the definition of such terms in subpart A of this part.

#### § 1280.602 Administrator, AMS.

*Administrator, AMS*, means the Administrator of the Agricultural Marketing Service, or any officer or employee of USDA to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

#### § 1280.603 Administrator, FSA.

*Administrator, FSA*, means the Administrator, of the Farm Service Agency, or any officer or employee of USDA to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

#### § 1280.604 Eligibility.

*Eligibility* is defined as any person subject to the assessment who during the representative period determined by the Secretary have engaged in the production, feeding, or slaughtering of lambs. Such persons are eligible to participate in the referendum. Those persons whose only share in the proceeds of a sale of lambs is a sales commission, handling fee or other service fee or the person acquired ownership of the lambs to facilitate the transfer of ownership of such lambs from the seller to a third party and resold such lambs no later than 10 days from the date on which the person acquired ownership are not considered producers, seedstock producers, or feeders and are not subject to the assessment. Such persons would not be eligible to participate in the referendum.

#### § 1280.605 Farm Service Agency.

*Farm Service Agency* also referred to as "FSA" means the Farm Service Agency of USDA.

#### § 1280.606 Farm Service Agency County Committee.

*Farm Service Agency County Committee*, also referred to as "FSA County Committee or COC," means the group of persons within a county who are elected to act as the Farm Service Agency County Committee.

#### § 1280.607 Farm Service Agency County Executive Director.

*Farm Service Agency County Executive Director*, also referred to as "CED," means the person employed by the FSA County Committee to execute the policies of the FSA County Committee and to be responsible for the day-to-day operation of the FSA county office, or the person acting in such capacity.

#### § 1280.608 Farm Service Agency State Committee.

*Farm Service Agency State Committee*, also referred to as "FSA State Committee," means the group of persons within a State who are appointed by the Secretary to act as the Farm Service Agency State Committee.

#### § 1280.609 Farm Service Agency State Executive Director.

*Farm Service Agency State Executive Director*, also referred to as "SED," means the person employed by the FSA State Committee to execute the policies of the FSA State Committee and to be responsible for the day-to-day operation of the FSA State office, or the person acting in such capacity.

#### § 1280.610 Public notice.

*Public notice* means not later than 30-days before the referendum is conducted, the Secretary shall notify the eligible voters in such manner as determined by the Secretary, of the voting period during which voting in the referendum will occur. The notice shall explain any registration and voting procedures established under section 518 of the Act.

#### § 1280.611 Representative period.

*Representative period* means the period designated by the Secretary pursuant to section 518 of the Act.

#### § 1280.612 Volume of production.

(a) For producers and seedstock producers, the term *volume of production* means the total number of live domestic lambs owned and produced during the most recent calendar year.

(b) For feeders, volume of production means the total number of lambs owned and fed during the most recent calendar year.

(c) For first handlers, volume of production means the total number of

lambs slaughtered during the most recent calendar year.

#### § 1280.613 Voting period.

The term *voting period* means a 4-week period to be announced by the Secretary for voting the referendum.

### Procedures

#### § 1280.620 General.

A referendum to determine whether eligible persons favor the continuance of this part shall be carried out in accordance with this subpart.

(a) The referendum will be conducted at county FSA offices.

(b) The Secretary shall determine if at least a majority of those persons voting for approval who also represent a majority of the volume of lambs owned and produced; owned and fed; or slaughtered, favor the continuance of this part.

#### § 1280.621 Supervision of the process for conducting a referendum.

The Administrator, AMS, shall be responsible for supervising the process of permitting persons to vote in a referendum in accordance with this subpart.

#### § 1280.622 Eligibility.

(a) Any person subject to the assessment who during the representative period determined by the Secretary has engaged in the production, feeding, or slaughtering of lambs is eligible to participate in the referendum. Those persons whose only share in the proceeds of a sale of lambs is a sales commission, handling fee or other service fee or the person acquired ownership of the lambs to facilitate the transfer of ownership of such lambs from the seller to a third party and resold such lambs no later than 10 days from the date on which the person acquired ownership are not considered producers, seedstock producers, or feeders and are not subject to the assessment. Such persons would not be eligible to participate in the referendum.

(b) *Proxy registration*. Proxy registration is not authorized, except that an officer or employee of a corporate producer, feeder, seedstock producer, or first handler, or any guardian, administrator, executor, or trustee of a person's estate, or an authorized representative of any eligible producer, feeder, seedstock producer, or first handler entity (other than an individual person), such as a corporation or partnership, may vote on behalf of that entity. Further, an individual cannot vote on behalf of another individual (i.e., spouse, sharecrop lease, etc.). Any individual,

who votes on behalf of any producer, feeder, seedstock producer, or first handler entity, shall certify that he or she is authorized by such entity to take such action. Upon request of the county FSA office, the person voting may be required to submit adequate evidence of such authority.

(c) *Joint and group interest.* A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation who engaged in the production, feeding, or slaughtering of lambs during the representative period as a producer, feeder, seedstock producer, or first handler entity shall be entitled to cast only one vote; provided, however, that any individual member of a group who is an eligible person separate from the group may vote separately.

#### **§ 1280.623 Time and place of the referendum.**

(a) The opportunity to vote in the referendum shall be provided during a 4-week period beginning and ending on a date determined by the Secretary. Eligible persons shall have the opportunity to vote following the procedures established in this subpart during the normal business hours of each county FSA office.

(b) Persons can determine the location of county FSA offices by contacting the nearest county FSA office, the State FSA office, or through an online search of FSA's Web site at <http://www.fsa.usda.gov/pas/default.asp>.

(c) Each eligible person shall cast a ballot in the county FSA office where FSA maintains the person's administrative farm records. For eligible persons not participating in FSA programs, the opportunity to vote would be provided at the county FSA office serving the county where the person owns or rents land. A person engaged in the production, feeding, slaughtering, of lambs in more than one county would vote in the county FSA office where the person does most of his or her business.

#### **§ 1280.624 Facilities.**

Each county FSA office will provide:

(a) A voting place that is well known and readily accessible to persons in the county and that is equipped and arranged so that each person can complete and submit their ballot in secret without coercion, duress, or interference of any sort whatsoever, and

(b) A holding container of sufficient size so arranged that no ballot or supporting documentation can be read or removed without breaking seals on the container.

#### **§ 1280.625 Certifications and referendum ballot form.**

Form LS-86 shall be used to vote in the referendum and certify eligibility. Eligible persons would be required to complete a ballot in its entirety, vote "yes" or "no" to continue the program, enter the number of lambs (volume of production) owned and produced; owned and fed; or slaughtered during a representative period and provide documentation such as a sales receipt or remittance form showing that the person voting was engaged in the production, feeding, or slaughtering of lambs during the representative period. The person or authorized representative shall sign the ballot certifying that they or the entity they represent were engaged in the production, feeding, or slaughtering of lambs during the representative period and that the volume of production voted is true and accurate.

#### **§ 1280.626 Certification and procedures.**

(a) Each eligible person shall be provided the opportunity to cast a ballot during the voting period announced by the Secretary.

(1) Each eligible person shall be required to complete form LS-86 in its entirety, sign it, and provide evidence that they were engaged in the production, feeding, or slaughtering of lambs during the representative period. The person must legibly place his or her name and, if applicable, the entity represented, address, county, and telephone number. The person shall sign and certify on form LS-86 that:

(i) The person was engaged in the production, feeding, or slaughtering of lambs during the representative period;

(ii) The person voting on behalf of a corporation or other entity is authorized to do so;

(iii) The person has cast only one vote; and

(iv) The volume of production listed on the ballot is true and accurate.

(2) Only a completed and signed form LS-86 accompanied by supporting documentation showing that the person was engaged in the production, feeding, or slaughter of lambs during the representative period shall be considered a valid vote.

(b) To vote, eligible persons may obtain form LS-86 in-person, by mail, or by facsimile from county FSA offices or through the Internet during the voting period. A completed and signed form LS-86 and supporting documentation, such as a sales receipt or remittance form, must be returned to the appropriate county FSA office where FSA maintains and processes the person's administrative farm records. For a person not participating in FSA

programs, the opportunity to vote in a referendum will be provided at the county FSA office serving the county where the person owns or rents land. A person engaged in the production, feeding, or slaughtering of lambs in more than one county would vote in the county FSA office where the person does most of his or her business. Forms obtained via the Internet would be located at <http://www.ams.usda.gov/lsg/mpb/rp-lamb.htm>.

(c) A completed and signed form LS-86 and the supporting documentation may be returned in-person, by mail, or facsimile to the appropriate county FSA office. Form LS-86 and supporting documentation returned in-person or by facsimile, must be received in the appropriate county FSA office prior to the close of the work day on the final day of the voting period to be considered a valid ballot. Form LS-86 and the accompanying documentation returned by mail must be postmarked no later than midnight of the final day of the voting period and must be received in the county FSA office on the 5th business day following the final day of the voting period.

(d) Persons who obtain form LS-86 in-person at the appropriate FSA county office may complete and return it the same day along with the supporting documentation.

#### **§ 1280.627 Canvassing voting ballots.**

(a) Canvassing of form LS-86 shall take place at the county FSA offices on the 6th business day following the final day of the voting period. Such canvassing, acting on behalf of the Administrator, AMS, shall be in the presence of at least two members of the county committee. If two or more of the counties have been combined and are served by one county office, the canvassing of the requests shall be conducted by at least one member of the county committee from each county served by the county office. The FSA State committee or the State Executive Director, if authorized by the State Committee, may designate the County Executive Director (CED) and a county or State FSA office employee to canvass the ballots and report the results instead of two members of the county committee when it is determined that the number of eligible voters is so limited that having two members of the county committee present for this function is impractical, and designate the CED and/or another county or State FSA office employee to canvass requests in any emergency situation precluding at least two members of the county committee from being present to carry

out the functions required in this section.

(b) Form LS-86 should be canvassed as follows:

(1) *Number of valid ballots.* A person has been declared eligible by FSA to vote by completing form LS-86 in its entirety, signing it, voting volume of production, and providing supporting documentation that shows the person who cast the ballot during the voting period was engaged in the production, feeding, or slaughtering of lambs during the representative period. Such ballot will be considered a valid ballot.

(2) *Number of ineligible ballots.* If FSA cannot determine that a person is eligible based on the submitted documentation or if the person fails to submit the required supporting documentation, the person shall be determined to be ineligible. FSA shall notify ineligible persons in writing as soon as practicable but no later than the 8th business day following the final day of the voting period.

(c) *Appeal.* A person declared to be ineligible by FSA can appeal such decision and provide additional documentation to the FSA county office within 5 business days after the postmark date of the letter of notification of ineligibility. FSA will then make a final decision on the person's eligibility and notify the person of the decision.

(d) *Invalid ballots.* An invalid ballot includes, but is not limited to the following:

(1) Form LS-86 is not signed or all required information has not been provided;

(2) Form LS-86 and supporting documentation returned in-person or by facsimile was not received by close of business on the last business day of the voting period;

(3) Form LS-86 and supporting documentation returned by mail was not postmarked by midnight of the final day of the voting period;

(4) Form LS-86 and supporting documentation returned by mail was not received in the county FSA office by the 5th business day following the final day of the voting period;

(5) Form LS-86 or supporting documentation is mutilated or marked in such a way that any required information on the form is illegible; or

(6) Form LS-86 and supporting documentation not returned to the appropriate county FSA office.

#### **§ 1280.628 Counting ballots.**

(a) Form LS-86 shall be counted by county FSA offices on the same day as the ballots are canvassed if there are no ineligibility determinations to resolve.

For those county FSA offices that do have ineligibility determinations, the requests shall be counted no later than the 14th business day following the final day of the voting period.

(b) Ballots shall be counted as follows:

(1) Number of valid ballots cast;

(2) Number of persons favoring the Order;

(3) Number of persons not favoring the Order;

(4) Volume of production voted favoring the continuation of the Order;

(5) Volume of production voted not favoring the continuation of the Order and;

(6) Number of invalid ballots.

#### **§ 1280.629 FSA county office report.**

The county FSA office report shall be certified as accurate and complete by the CED or designee, acting on behalf of the Administrator, AMS, as soon as may be reasonably possible, but in no event shall submit no later than 18th business day following the final day of the specified period. Each county FSA office shall transmit the results in its county to the FSA State office. The results in each county may be made available to the public upon notification by the Administrator, FSA, that the final results have been released by the Secretary. A copy of the report shall be posted for 30 calendar days following the date of notification by the Administrator, FSA, in the county FSA office in a conspicuous place accessible to the public. One copy shall be kept on file in the county FSA office for a period of at least 12 months after notification by FSA that the final results have been released by the Secretary.

#### **§ 1280.630 FSA State office report.**

Each FSA State office shall transmit to the Administrator, FSA, as soon as possible, but in no event later than the 20th business day following the final day of the voting period, a report summarizing the data contained in each of the reports from the county FSA offices. One copy of the State summary shall be filed for a period of not less than 12 months after the results have been released and available for public inspection after the results have been released.

#### **§ 1280.631 Results of the referendum.**

(a) The Administrator, FSA, shall submit to the Administrator, AMS, the reports from all State FSA offices. The Administrator, AMS, shall tabulate the results of the ballots. USDA will issue an official press release announcing the results of referendum and publish the same results in the **Federal Register**. In addition, USDA will post the official

results at the following Web site: <http://www.ams.usda.gov/lsg/mpb/rp-lamb.htm>. Subsequently, State reports and related papers shall be available for public inspection upon request during normal business hours in the Marketing Programs Branch; Livestock and Seed Program, AMS, USDA, Room 2638-S; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC.

(b) If the Secretary deems necessary, a State report or county report shall be reexamined and checked by such persons who may be designated by the Secretary.

#### **§ 1280.632 Disposition of records.**

Each FSA CED will place in sealed containers marked with the identification of the "Lamb Checkoff Program Referendum," all of the form LS-86's along with the accompanying documentation and county summaries. Such records will be placed in a secure location under the custody of FSA CED for a period of not less than 12 months after the date of notification by the Administrator, FSA, that the final results have been announced by the Secretary. If the county FSA office receives no notice to the contrary from the Administrator, FSA, by the end of the 12 month period as described in this section, the CED or designee shall destroy the records.

#### **§ 1280.633 Instructions and forms.**

The Administrator, AMS, is authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart.

#### **§ 1280.634 Confidentiality.**

The names of persons voting in the referendum and ballots shall be confidential and the contents of the ballots shall not be divulged except as the Secretary may direct. The public may witness the opening of the ballot box and the counting of the votes but may not interfere with the process.

Dated: October 8, 2004.

**Barry L. Carpenter,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 04-23110 Filed 10-12-04; 9:08 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 995**

[Docket No: 040608174-4174-01]

RIN 0648-AR87

**Certification Requirements for Distributors of NOAA Electronic Navigational Charts/NOAA Hydrographic Products**

**AGENCY:** National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) proposes to promulgate certification requirements with standards for applicants who want to distribute NOAA Electronic Navigational Charts (NOAA ENC<sup>®</sup>) as official data. NOAA intends to offer two types of certification. The first type, "Certified NOAA ENC Distributor" (CED), would be for NOAA ENC<sup>®</sup>s downloading, exact copying, and redistribution of those copies of NOAA ENC<sup>®</sup>s data. The second type, "Certified NOAA ENC Value Added Distributor" (CEVAD), would permit reformatting official NOAA ENC<sup>®</sup>s into a System Electronic Navigational Chart (SENC) using type-approved software, and distribution of that SENC. Both types of certification would result in products that meet federal chart carriage regulations. Both types of certification would permit, but would not require, compression, encryption, and packaging with other data.

NOAA intends by this action to assure that quality official NOAA ENC data is offered to the public in support of safe navigation on U.S. waters.

**DATES:** Comments must be received by November 15, 2004.

**ADDRESSES:** Comments in writing should be submitted to Director, Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East West Highway, Silver Spring, MD 20910. Written comments may be faxed to (301) 713-4516. Comments by e-mail should be submitted to [ECDIS@noaa.gov](mailto:ECDIS@noaa.gov).

**Electronic Access**

A digital copy of the proposed certification requirements for NOAA ENC distribution, with application templates, is accessible via the Internet at NOAA's Web site: [http://](http://nauticalcharts.noaa.gov/mcd/enc/index.htm)

[nauticalcharts.noaa.gov/mcd/enc/index.htm](http://nauticalcharts.noaa.gov/mcd/enc/index.htm).

**FOR FURTHER INFORMATION CONTACT:**

Captain Jim Gardner, Chief, Marine Chart Division, Office of Coast Survey, NOS/NOAA, (301) 713-2724, [Jim.Gardner@noaa.gov](mailto:Jim.Gardner@noaa.gov).

**SUPPLEMENTARY INFORMATION:****Background**

NOAA produces electronic navigational charts (ENCs) that may be used in a type-approved Electronic Chart Display and Information System (ECDIS) to meet federal nautical chart carriage regulations. NOAA distributes these official ENCs to the public for free over the Internet. This proposed rule would establish the requirements by which entities may be certified to download, redistribute, repackage, or in some cases reformat, official ENCs while retaining their official status for meeting chart carriage regulations. No other processes would result in redistributed NOAA ENC<sup>®</sup> products that meet chart carriage regulations.

NOAA developed these proposed certification requirements to satisfy directives contained in Section 104 of the Hydrographic Services Improvement Act Amendments of 2002, 33 U.S.C. 892b(b)(1). The Act states that the Administrator of NOAA shall develop and implement a quality assurance program that is equally available to all applicants, under which the Administrator may certify hydrographic products that satisfy the standards promulgated by the Administrator under the Hydrographic Services Improvement Act.

Hydrographic products include non-federal publicly or commercially available nautical charts, nautical information databases, and other products derived from hydrographic data. These certification requirements would ensure the quality of the data and its timely and accurate dissemination, for safe navigation, and would provide the public with a wider variety of specialized products that are considered official NOAA data for regulatory purposes.

To obtain a written copy of the proposed certification requirements for NOAA ENC distribution, refer to **ADDRESSES** section or visit the Internet at NOAA's Web site: <http://nauticalcharts.noaa.gov/mcd/enc/index.htm>.

In addition to the rules set forth in the NOAA certification process, if the Value Added Distributor converts NOAA ENC data to other formats, it would need to comply with the International Hydrographic Organization (IHO)

Technical Resolution A3.11 published in M-3 Resolutions of the IHO, Chapter A, Section 3. This resolution is available from the IHO Web site: <http://www.iho.shom.fr>. Also, for reference, it is advised that Distributors be familiar with the International Electrotechnical Commission (IEC) Publication 61174 and the IHO Special Publication S57. IEC Publication 61174 is the basis for type-approval specifications related to operational methods of testing and required test results for an IMO-compliant ECDIS. The IEC Publication 61174 can be ordered from the IEC Web site: <http://www.iec.ch>. The IHO Special Publication S57 includes a description of the data structure and format to be used for the exchange of ENC data, product specification for the production of ENC data, and an updating profile. The IHO Special Publication S57 is available at the IHO Web site: <http://www.iho.shom.fr>.

**Classification***A. Executive Order 12866*

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

*B. Regulatory Flexibility Act*

The Chief Counsel for Regulation of the Department of Commerce certifies to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule would not have a significant economic impact on a substantial number of small entities. The purpose of this rule is to provide the procedures and requirements necessary for an entity to be certified as "Certified NOAA ENC Distributor" or "Certified NOAA ENC Value Added Distributor." Both types of certification would result in products that meet federal chart carriage regulations. Both types of certification would permit, but do not require, compression, encryption, and packaging with other data.

This certification process would be voluntary. Only those applicants who wish to distribute ENC data with the phrase "Certified NOAA ENC Distributor" or "Certified NOAA ENC Value Added Distributor" on products and marketing materials would need to apply.

NOAA proposes this certification process under the authority of 33 U.S.C. 892b(b)(1).

The Small Business Administration guideline to separate small from large businesses is \$4 million for Mapmaking firms and \$5 million for Navigational Services to Shipping and Other Support Activities for Water Transportation.

NOAA is unable to determine the total number of small entities that will be affected by this rule, as it does not specifically track this type of information. However, based upon knowledge of the nature of the industry, NOAA believes the majority of the entities affected will be small businesses.

The total estimated economic impact to small entities associated with startup costs, software and equipment upgrades, the application process, reporting, record keeping, and compliance requirements is not expected to amount to sums greater than \$5,228 per entity annually. However, NOAA does not believe this cost would have a negative impact on small companies, as only those companies that believe they can profit would seek certification. This estimate of costs incurred associated with these requirements should be offset through the benefits in increased sales. NOAA would require only bi-annual reporting and record keeping, balancing the burden to the distributor with the assurance of maintaining safe navigation through data quality verification for public safety. Also, to lessen the economic impact, the duration of certification would be five years from the date of issuance.

It is anticipated the effects of this rule if adopted would be largely positive to small entities, with potential economic benefits. The proposed rule will allow certified businesses to sell a new product that is considered official NOAA data, with the phrase "Certified NOAA ENC Distributor" or "Certified NOAA ENC Value Added Distributor" on products and marketing materials. Federal regulation and reporting would be extremely limited. Startup costs would be minimal. There would be no charge to small businesses for this official product, which they could use, alter, and/or resell for profit. The rule would create a new market for electronic chart products that are recognized by NOAA through the proposed certification process.

### C. Paperwork Reduction Act

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The following requirements have been submitted to OMB for approval; the total estimate of burden hours annually for all distributors is 535 hours. The total estimate of burden hours per distributor is approximately 60 hours a year.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed,

completing and reviewing the collection of information, sending the initial application to OCS to become a certified distributor, and sending the bi-annual reports to OCS.

Public comment is sought regarding whether these proposed collections of information are necessary for the proper performance of the functions of the agency and whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NOS (see **ADDRESSES**) and to David Rostker at the Office of Information and Regulatory Affairs, OMB, by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or by fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

There are no duplicative, overlapping, or conflicting Federal rules associated with this proposed rule.

### List of Subjects in 15 CFR Part 995

Navigation (water), Navigational charts, Certification requirements, Incorporation by reference.

For the reasons stated in the preamble, NOS proposes to amend 15 CFR chapter IX by adding Subchapter F, Part 995 to read as follows:

### SUBCHAPTER F—QUALITY ASSURANCE AND CERTIFICATION REQUIREMENTS FOR NOAA HYDROGRAPHIC PRODUCTS AND SERVICES

### PART 995—CERTIFICATION REQUIREMENTS FOR DISTRIBUTORS OF NOAA HYDROGRAPHIC PRODUCTS

#### Subpart A—General

Sec.

- 995.1 Purpose and scope.
- 995.2 Incorporation by reference.
- 995.3 Availability of other publications.
- 995.4 Definitions.
- 995.5 Abbreviations.
- 995.6 Fees.
- 995.7 Liability.
- 995.8 Alterations.

#### Subpart B—Certification and Procedures

- 995.10 Correspondence and applications.
- 995.11 Government review and approval.
- 995.12 Certification designation.

- 995.13 Transfer of certification.
- 995.14 Auditing.
- 995.15 Termination of certification.
- 995.16 Term of certification.

### Subpart C—Requirements for Certified Distributors and Value Added Distributors of NOAA ENC Products

- 995.20 General.
- 995.21 Registry of data users.
- 995.22 Training of data users.
- 995.23 Acquisition of data.
- 995.24 Distribution of data.
- 995.25 Quality Management System.
- 995.26 Conversion of NOAA ENC files to other formats.
- 995.27 Format validation software testing.
- 995.28 Use of NOAA emblem.
- 995.29 Limitation on endorsements.

### Appendix A to Subpart C of Part 995—Certification Application Templates

Authority: 33 U.S.C. 892b(b)(1).

### Subpart A—General

#### § 995.1 Purpose and scope.

(a) The National Oceanic and Atmospheric Administration (NOAA) produces electronic navigational charts (ENCs) that may be used in a type-approved Electronic Chart Display and Information System (ECDIS) to meet federal nautical chart carriage regulations. NOAA distributes these official ENCs for free over the Internet. This part establishes the requirements by which entities may be certified to download, redistribute, repackage, or in some cases reformat, official NOAA ENCs® while retaining their official status for meeting chart carriage regulations. No other processes result in redistributed NOAA ENC products that meet chart carriage regulations.

(b) Two types of certification are offered. The first type, "Certified NOAA ENC Distributor" (CED), covers NOAA ENC downloading, exact copying, and redistribution of those copies. The second type, "Certified NOAA ENC Value Added Distributor" (CEVAD), permits reformatting official NOAA ENCs into a System Electronic Navigational Chart (SENC) using type-approved software, and distribution of that SENC. Both types of certification result in products that meet federal chart carriage regulations. Both types of certification permit, but do not require, compression, encryption, and packaging with other data.

(c) Entities without certification may continue to download official ENCs and use, alter, and/or distribute that data, but the result does not meet federal nautical chart carriage regulations. Individuals may download official ENCs for their own use. If imported unaltered into a type-approved ECDIS, the result



meets federal nautical chart carriage regulations.

(d) This part defines the minimum requirements regarding the process for ensuring the quality of products produced by re-distributing NOAA ENC data or incorporating it into value-added navigational products. These requirements apply to entities wishing to have products and services for the re-distribution of NOAA ENC data authorized as "Certified NOAA ENC Distributor" and/or as "Certified NOAA ENC Value Added Distributors."

#### § 995.2 Incorporation by reference.

Certain material listed in this section is incorporated by reference with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. The materials listed in this section are incorporated by reference in the corresponding sections noted. The materials are available for purchase at the corresponding addresses noted below, and all are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC, or at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

(a) The material listed below is available for purchase from the International Hydrographic Bureau, 4 quai Antoine 1er, B.P. 445, MC 98011 MONACO CEDEX; telephone: (377) 93.10.81.00; fax: (377) 93.10.81.40; e-mail : info@ihb.mc. Orders may be submitted by letter, fax, or e-mail.

(1) IHO Technical Resolution A3.11—ENC/SENC Distribution Option, updated September 2002, § 995.25.

(2) [Reserved]

(b) [Reserved]

#### § 995.3 Availability of other publications.

(a) For further guidance you may obtain the following:

(1) IEC 61174—The International Electrotechnical Commission identified and described the necessary performance tests and checks for an International Maritime Organization compliant ECDIS. The IMO Performance Standards permit National Maritime Safety Administrations to consider ECDIS as the functional equivalent to charts required by Regulation V, Chapter 20 of the 1974 SOLAS Convention. IEC Publication 61174, dated August 1998, can be purchased from the IEC website: <http://www.iec.ch>.

(2) IHO Special Publication S57—The IHO Transfer Standard for Hydrographic Data, edition 3, dated November 1996, describes the data structure and format to be used for the exchange of ENC data,

product specification for the production of ENC data, and an updating profile.

IHO S-57 documentation is available on CD ROM from the International Hydrographic Bureau, 4 quai Antoine 1er, B.P. 445, MC 98011 MONACO CEDEX; telephone: (377) 93.10.81.00; e-mail: info@ihb.mc.

(b) [Reserved]

#### § 995.4 Definitions.

*Certified NOAA ENC Distributor (CED)* means an entity that is certified as a distributor of NOAA ENC files by NOAA. This certification indicates that the distributor meets certain requirements (in Subparts A, B, and D of this document) that ensure timely and accurate dissemination of NOAA ENC data.

*Certified NOAA ENC Value Added Distributor (CEVAD)* means an entity that creates a derived product that has been produced from NOAA ENC files using a process certified by NOAA. This certification indicates that the CEVAD meets certain requirements (in Subparts A, C, and D of this document) that ensure timely and accurate dissemination of NOAA ENC data in a non-ENC format.

*Derived product* means a navigational product produced by transforming the NOAA ENC files to another format while preserving the content and accuracy. It may contain information from other sources.

*Distributor* means a company that re-distributes a NOAA hydrographic product to end users in its original format.

*Electronic Chart Display and Information System (ECDIS)* means the internationally adopted computer-assisted navigation system which, when complying with all of the required specifications, can be accepted as the up-to-date chart required by V/20 of the 1974 SOLAS Convention.

*Electronic Navigational Chart (ENC)* means a database, standardized as to content, structure, and format, issued for use with ECDIS on the authority of government authorized hydrographic offices. The ENC contains all the chart information necessary for safe navigation and may contain supplementary information in addition to that contained in the paper chart (e.g. sailing directions), which may be considered necessary for safe navigation.

*NOAA ENC®* means Electronic Navigational Charts produced by the National Oceanic and Atmospheric Administration. NOAA ENC files comply with the IHO S-57 standard, Edition 3.1 and the ENC Product Specification. The phrase "NOAA ENC"

is a registered trademark and may not be used without permission.

*System Electronic Navigational Chart (SENC)* means a database resulting from the transformation of the ENC by ECDIS for appropriate use, updates to the ENC by appropriate means and other data added by the mariner. It is this database that is actually accessed by ECDIS for the display generation and other navigational functions, and is equivalent to an up-to-date paper chart. The SENC may also contain information from other sources.

*Value Added Distributor* means a company that may use the NOAA ENC to create derived products used by end users.

#### § 995.5 Abbreviations.

CED Certified NOAA ENC Distributor  
CEVAD Certified NOAA ENC Value Added Distributor  
CRC Cyclical Redundancy Checksum  
ECDIS Electronic Chart Display and Information System  
ENC Electronic Navigational Chart  
IEC International Electrotechnical Commission  
IHO International Hydrographic Organization  
IMO International Maritime Organization  
ISO International Standards Organization  
NOAA National Oceanic and Atmospheric Administration  
NOS National Ocean Service  
OCS Office of Coast Survey  
SENC System Electronic Navigational Chart  
SOLAS Safety of Life at Sea  
VAD Value Added Distributor

#### § 995.6 Fees.

The Office of Coast Survey, NOAA, may charge a fee for costs incurred to process the request for certification pursuant to 33 U.S.C. 892b(b)(1)(C) and 892b(b)(2). The amount of the fee, if one is charged, will be determined by the Director, Office of Coast Survey, and charged to all Applicants based on the time and effort involved. Any fee shall not exceed the costs of conducting the quality assurance testing, evaluation, or studies necessary to determine whether the hydrographic product satisfies the standards.

If a fee is charged, it will be charged for each application for certification submitted by an Applicant. The only exception is for resubmissions of revised requests that were initially unacceptable and are sent in within 90 days as described in § 995.11(b)(2).

#### § 995.7 Liability.

Distributors and value added distributors certified under this section



shall indemnify and hold harmless the U.S. Government for any loss, claim, damage, or liability of any kind, the extent caused by the negligence of certified distributors or value added distributors or their employees, arising out of the use by a distributor or value added distributor, or any party acting on its behalf or under its authorization, of NOAA data.

#### **§ 995.8 Alterations.**

NOAA reserves the right to change these requirements at any time.

### **Subpart B—Certification and Procedures**

#### **§ 995.10 Correspondence and applications.**

(a) Distributors or value-added distributors desiring certification from NOAA shall provide a written request and application for certification to the Office of Coast Survey, Attention: Distribution Certification, N/CS, 1315 East West Highway, Silver Spring, Maryland 20910. Such a distributor or value-added distributor is hereafter referred to as Applicant. The Office of Coast Survey (OCS) is the approving office for certification under these requirements.

(b) Applicant shall provide an application for certification that describes how each element in the applicable sections of these requirements has been met. The application will also contain an acknowledgment, signed by a company principal, of all terms and conditions described in these requirements.

(c) Applicant shall use the appropriate template provided in Appendix A to these requirements to prepare their request for certification.

(d) Applicant shall provide, with its application, a point of contact with mailing address, phone number, and e-mail address. Applicant shall immediately notify NOAA, through the Office of Coast Survey, of any changes to point of contact information. Failure to do so will be considered a violation of these requirements and may lead to termination of certification.

#### **§ 995.11 Government review and approval.**

(a) An application will be reviewed by NOAA within 90 days of receipt. If all requirements, as defined by these document, are adequately addressed, certification will be granted. If for any reason NOAA will be unable to process the application for certification within the 90-day time frame, Applicant will be notified and a revised date will be provided for a decision on the request.

(b)(1) NOAA will determine if the request for certification is complete and

that it demonstrates that Applicant has met all of the applicable requirements described in this document.

(2) In the event that a request is incomplete or does not demonstrate that Applicant has met all of the applicable requirements, NOAA will consider the application unacceptable. NOAA will notify the Applicant of the deficiencies in writing. Applicant may re-submit a revised application within 90 days of receipt of NOAA's denial notice. Resubmissions received after the 90-day resubmission period will automatically be denied. NOAA will review applications received within the 90-day resubmission period in the time frame described in § 995.11(a). After the second review, if the application is still unacceptable, Applicant will be again notified of the deficiencies in writing. At that point, Applicant may not re-submit the application for certification for a period of one year from the date of the second notification of an unacceptable application.

#### **§ 995.12 Certification designation.**

(a) An Applicant that has been certified by NOAA as a CED may use the phrase "Certified NOAA ENC Distributor" on products and marketing materials. An Applicant that has been certified by NOAA as a CEVAD may use the phrase "Certified NOAA ENC Value Added Distributor" on products and marketing materials.

(b) [Reserved]

#### **§ 995.13 Transfer of certification.**

If, subsequent to certification, a distributor or value added distributor of NOAA hydrographic products contracts or in any way transfers the production or distribution of all or part of the certified products to another entity, the existing certification is terminated and the process must be re-certified.

#### **§ 995.14 Auditing.**

NOAA reserves the right to audit certified distributors and value added distributors of NOAA hydrographic products to ensure that these requirements are being met. Such an audit may consist of: visits to the production facilities, product testing, confirmation of ISO 9001 certification, confirmation of type approval for conversion software, and so forth.

#### **§ 995.15 Termination of certification.**

(a) NOAA reserves the right to audit certified distributors. In the event that NOAA determines that a certified distributor or value added distributor of NOAA hydrographic products is not meeting the requirements described in these regulations, the Office of Coast

Survey, NOAA will provide written notification of any deficiencies to the distributor. The distributor or value added distributor's certification will be immediately suspended and the distributor or value added distributor shall have thirty (30) working days to correct the deficiencies. If the deficiencies are not corrected within this time, the Director, Office of Coast Survey, may terminate the certification.

(b) Notice of termination will be provided to the distributor or value added distributor in writing and will also be released to the public.

(c) Certification may also be terminated if the distributor or value added distributor:

(1) Contracts or transfers the production or distribution of all or part of the certified products to another entity without the approval of NOAA, or

(2) Fails to, or is unable (in the opinion of NOAA) to carry out its responsibilities as described in these requirements.

(d) After a distributor or value added distributor's certification has been terminated, it may not resubmit a request for certification for a period of one year from the date of termination.

#### **§ 995.16 Term of certification.**

The duration of certification is five years from the date of issuance. At the end of the certification's duration, the process must be re-certified by the distributor or value added distributor submitting a request for certification as described in § 995.10. It may also be revoked prior to the duration under the conditions described in § 995.15.

### **Subpart C—Requirements for Certified Distributors and Value Added Distributors of NOAA ENC Products**

#### **§ 995.20 General.**

The requirements for certification as a "Certified NOAA ENC Distributor" (CED) and "Certified NOAA ENC Value Added Distributor" (CEVAD) are described below.

#### **§ 995.21 Registry of data users.**

(a) CED or CEVAD shall maintain a registry of customers receiving NOAA ENC data. CED or CEVAD shall provide said registry to NOAA on a biannual basis for internal NOAA planning and product evaluation use. NOAA agrees to treat such information as proprietary (if requested to do so by the CED or CEVAD).

(b)(1) The registry shall include, but not be limited to:

(i) Which NOAA ENC® cells were provided to each customer;

(ii) Edition number of each cell provided;

(iii) Updates provided for each cell;  
 (iv) Method of distribution for each customer.

(2) The registry may also include information about the type and size of vessel that the NOAA ENC data has been provided for as well as an anonymous unique identifier for the vessel.

#### **§ 995.22 Training of data users.**

CED or CEVAD shall, by providing appropriate training and/or adequate documentation, ensure that the recipient has a sufficient level of knowledge about the NOAA ENC and the service provided by CED or CEVAD, including:

(a) Any time delays that may occur between official release of a NOAA ENC or update, and CED or CEVAD providing same to end users;

(b) Any non-NOAA ENC data or information that is provided by CED or CEVAD in addition to the NOAA ENC.

#### **§ 995.23 Acquisition of data.**

(a) CED or CEVAD shall obtain official NOAA ENC® files only by directly downloading them from an official NOAA ENC site on the Internet.

(b)(1) After downloading NOAA ENC files, CED or CEVAD shall uncompress the files and compute a CRC checksum value for each NOAA ENC file and verify that it matches the CRC checksum value contained in the CATALOG.031 file provided with the NOAA ENC files by NOAA. This is to ensure that no NOAA ENC files have been corrupted during the download process.

(2) In the event that said CRC checksum value does not match that in the CATALOG.031 file, CED or CEVAD agrees to:

(i) Repeat the download process;

(ii) In the event that said CRC checksum value for the repeat download does not match that in the CATALOG.031 file, immediately notify the NOAA ENC Production Manager at [enc.chartproduction@noaa.gov](mailto:enc.chartproduction@noaa.gov), and;

(iii) Not distribute any NOAA ENC that does not have a valid CRC checksum.

#### **§ 995.24 Distribution of data.**

(a) *Distribution of data by CED—(1) Format of distributed data—(i) General.* Except as listed in § 995.24(a)(1)(ii) and

(iii), CED agrees to distribute NOAA ENC data only in the original form provided by NOAA after uncompressing and shall not change the file format (S-57 Edition 3.1 ENC or other formats specified by NOAA), or contents, or alter the NOAA ENC data in any way.

(ii) *Compression.* The NOAA ENC files may be compressed using a lossless

compression technique provided that CED makes the decompression software available to the end user as part of the distribution service. Decompressed files must have the same CRC checksum value as the original files. The CED agrees to make the compression/decompression software and documentation available to NOAA for testing.

(iii) *Encryption.* The NOAA ENC files may be encrypted by CED, providing that the encryption/decryption process does not result in any information loss and that CED makes the decryption software available to the end user as part of the distribution service. Decrypted files must have the same CRC checksum value as the original files. CED shall make the encryption/decryption software and documentation available to NOAA for testing.

(2) *Frequency of distribution.* CED shall make all current editions of NOAA ENC files and all updates to or new editions of NOAA ENC files available to its customers within five working days of the files or updates being posted by NOAA.

(3) *Distribution report.* CED shall provide a quarterly report on when NOAA ENC files were downloaded and when they were distributed to end users.

(4) *Additional data.* (i) If CED provides other data to customers in addition to NOAA ENC data (e.g., ENC data from other nations, raster chart data, privately produced data, etc.), CED shall provide a clear indication to the customer which files are official NOAA ENC data and which files are not. This may be accomplished through means such as package labeling, notifications in software, or other means.

(ii) Additionally, any data that is included with NOAA ENC data must not result in embarrassment to the Department of Commerce or NOAA. There must be no conflict with any trademark rights and the inclusion of non-NOAA data will not constitute any endorsement of or favoritism toward the non-NOAA data or CED.

(5) *Identification of contents.* CED shall ensure that NOAA ENC® files provided to an end user are clearly identified as to the contents (cells, updates, and ancillary files) and authenticity of the exchange set.

(b) *Distribution of Data by CEVADs—(1) Frequency of distribution.* CEVAD shall make all current editions of NOAA ENC files and all updates to or new editions of NOAA ENC files available to its customers within five working days of the files or updates being posted by NOAA.

(2) *Distribution report.* CEVAD shall provide a quarterly report to NOAA on when NOAA ENC files were downloaded and when they were distributed or made available to end users.

(3) *Additional data.* (i) If CEVAD provides products to customers that incorporate other data in addition to NOAA ENC data (e.g., ENC data from other nations, raster chart data, privately produced data, etc.), CEVAD shall provide a clear indication in the product which data are from official NOAA ENC data and which data are not. This shall be done in a way that allows the navigation system to give the end user an automatic notification or warning that particular data elements within the product are not from the official NOAA ENC. Any such data shall not degrade the official NOAA ENC data or information.

(ii) Additionally, any data that is included with NOAA ENC data must not result in embarrassment to the Department or NOAA. There must be no conflict with any trademark rights and the inclusion of non-NOAA data will not constitute any endorsement of or favoritism toward the non-NOAA data or CEVAD.

(4) *Identification of contents.* CEVAD shall ensure that data provided to an end user clearly identify which NOAA ENC® files are included in the product as to the contents (cells, updates, and ancillary files) and authenticity of the NOAA ENC files used.

#### **§ 995.25 Quality Management System.**

(a) *Quality Management System for CEVADs.* (1) CEVAD shall operate a quality management system, based on ISO 9001–2000 or equivalent, which embraces all elements of the process used to process and distribute NOAA ENC files. The minimum requirements for such a quality management system are those defined in this document. The quality management system must ensure that the production process complies with all relevant requirements of this document.

(2) The quality management system must, at a minimum, include an adequate account of:

(i) The quality objectives and the organizational structure, responsibilities, and powers of management with regard to production quality;

(ii) The techniques, processes, and systematic actions that will be used for quality management throughout the production process, including NOAA ENC conversion and the quality of the product being distributed;

(iii) The examination and tests that will be carried out before, during, and after processes essential for the quality of the product, and the frequency with which they will be carried out;

(iv) The quality records, such as inspection records and test data, qualification reports of personnel concerned resulting from the program specified herein; and

(v) The means for monitoring the achievement of the required quality of the product and the effective operation of the quality management system.

(3) Design and development changes shall be reviewed, verified, and validated as appropriate and approved by the ISO 9001 certification authority (or equivalent if another quality management system is used) before implementation.

(4) If the type approved conversion software is maintained by a third party, CEVAD shall ensure that no changes made to the conversion software render the type approval of the conversion software invalid, and shall evaluate the effects of such changes on the end users of the product.

(5) CEVAD shall analyze both internal information and that received from external parties in order to continually monitor and improve the production process and the product being distributed.

(6) CEVAD shall ensure that personnel performing work affecting the production process are competent with regard to appropriate education, training, skills, and expertise.

(7) CEVAD shall conduct internal audits at planned intervals to determine whether the quality management system conforms to the requirements of this document and is effectively implemented and maintained. The audit program shall take into consideration the individual processes' importance in relation to the product quality, as well as results of previous audits. Selection of auditors and conducting of audits shall, as far as practicable, insure objectivity and impartiality in the audit process.

(8) CEVAD shall ensure that actions are taken without undue delay to eliminate detected non-conformities and their causes. Follow-up activities shall include the verification of the actions taken and the reporting of verification results.

(9) Format validation software testing. Tests shall be performed verifying, as far as reasonable and practicable, that CEVAD's data testing software performs the checks, as specified by CEVAD, for verifying that the converted data conforms to its own proprietary product specification.

These tests may be combined with testing of the conversion software.

(b) [Reserved]

#### **§ 995.26 Conversion of NOAA ENC files to other formats.**

(a) *Conversion of NOAA ENC files to other formats*—(1) *Content*. CEVAD may provide NOAA ENC data in forms other than that provided by NOAA. However, CEVAD shall not change the information content provided by the NOAA ENC. This means that all features and their associated attribution must be preserved in the CEVADs data files without degradation to positional accuracy or informational content.

(2) *Software certification*. Conversion of NOAA ENC data to other formats must be accomplished within the constraints of "IHO Technical Resolution A3.11 (Incorporation by Reference see § 995.2)—ENC/SENC Distribution Option," in particular, paragraph three:

Distributors who are to supply the SENC service must operate under the regulations of the issuing authority. The onshore ENC to SENC conversion must be performed using type-approved software.

(3) *Error reporting*. Any errors detected during the conversion process shall be logged and investigated prior to releasing the data in which the errors occurred. Any errors that apparently originate in the NOAA ENC files shall be immediately reported to NOAA.

(4) *Format check*. CEVAD shall ensure that the converted data conforms to the CEVAD's own format specifications and shall test load the converted data to ensure that it will correctly load and display on the intended equipment.

(b) [Reserved]

#### **§ 995.27 Format validation software testing.**

Tests shall be performed verifying, as far as reasonable and practicable, that CEVAD's data testing software performs the checks, as specified by CEVAD, for verifying that the converted data conforms to its own proprietary product specification. These tests may be combined with testing of the conversion software.

#### **§ 995.28 Use of NOAA emblem.**

(a) Permission for the use of the NOAA emblem must be obtained by formally requesting such permission from NOAA and the Department of Commerce through NOAA's Office of Coast Survey.

(b) Use of the NOAA emblem must satisfy an interest of the Department; the use may not result in embarrassment to the Department; there must be no conflict with any trademark rights, as

stated in § 995.24(a)(4)(ii) and (b)(3)(ii); and there can be no endorsement or favoritism toward the distributor or value added distributor using the emblem, or other appearance of impropriety.

(c) Certification under these regulations does not automatically grant the distributor or value added distributor the right to use the NOAA logo. Use of the NOAA logo without express permission from NOAA and the Department of Commerce will be considered grounds for denial of an application for certification or termination of certification.

(d) *Emblem use by certified distributors or certified value added distributors of NOAA electronic products*. (1) A CED or CEVAD may use the NOAA emblem in product labeling and advertising materials but only in conjunction with the phrase "Certified NOAA ENC Distributor" or "Certified NOAA ENC Value Added Distributor," as applicable, and only after receiving separate, written permission from NOAA and the Department of Commerce as described below.

(2) If the NOAA emblem is used with products that include other data, clear indication must be provided to the customer indicating that the emblem and the phrase "Certified NOAA ENC Distributor" or "Certified NOAA ENC Value Added Distributor" does not apply to the entire product delivered. Information on the effects of such limitation must be provided to the customer. (See § 995.24(a)(4) and (5), and (b)(3) and (4)).

#### **§ 995.29 Limitation on endorsements.**

By certifying compliance with these requirements, NOAA does not automatically, directly, or indirectly endorse any product or service provided, or to be provided, by distributor or value added distributor or its successors, assignees, or licensees. The distributor or value added distributor shall not in any way imply that this certification is an endorsement of any such product or service without separate, written permission from NOAA and the Department of Commerce.

#### **Appendix A to Subpart C of Part 995—Certification Application Templates**

Notice to respondents:

This information is being collected by NOAA to ascertain qualifications for certification as an authorized distributor of official NOAA ENC® data. NOAA developed this certification process under the authority of 33 U.S.C. 892b(b)(1), which states that the Administrator of NOAA is directed to develop and implement a quality assurance program that is equally available to all

applicants, under which the Administrator may certify hydrographic products that satisfy the standards promulgated by the Administrator under section 892a(a)(3) of the Hydrographic Services Improvement Act.

The information on these forms is not associated with performance of agency functions.

Public reporting burden for this collection of information is estimated to average 16 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to [Jim.Gardner@noaa.gov](mailto:Jim.Gardner@noaa.gov).

Responses to this collection are considered voluntary, though they are required for certification.

The information requested on these forms will not be disseminated to the public or used to support information that will be disseminated to the public. Any disclosure of proprietary information will be held in confidentiality as regulated under the Trade Secrets Act. NOAA will not violate that Act's prohibitions against unauthorized agency disclosures of trade secrets or other confidential business information.

Notwithstanding any other provision of the law, no person is required to, nor shall any person be subject to a penalty for failure to, comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

OMB Control # \_\_\_\_\_ Expires \_\_\_\_\_

#### **Application for Certification as "Certified NOAA ENC Distributor"**

Company Name  
Company Address  
Company Phone Number  
Company Fax Number  
Company E-Mail Address  
Point of Contact  
Point of Contact Address  
Point of Contact Phone Number  
Point of Contact Fax Number  
Point of Contact E-Mail Address

This is a request for the above named company (hereinafter referred to as Distributor to be certified as a "Certified NOAA ENC Distributor" (CED). This document describes how each of the requirements for certification is being met. Descriptive titles after each number in parenthesis correspond to section titles in the rule.

##### **(1) Registry of data users**

Include a description of the data user registry, including:

- (a) What data elements it contains, specifically showing how the required elements are included;
- (b) A hardcopy sample of the report that will be periodically submitted to NOAA;
- (c) A short description of how the registry is maintained.

##### **(2) Training of data users**

Include a description of any training and a copy of any documentation provided to users that is intended to meet this requirement.

##### **(3) Acquisition of data**

Distributor asserts that all procedures described in this requirement for the acquisition of NOAA ENC® data for distribution are being followed.

##### **(4) Distribution of data/General**

Distributor asserts that all NOAA ENC® data distributed will be in the format described by this requirement.

##### **(5) Distribution of data/Compression**

Distributor shall indicate if data compression techniques are used. If Distributor uses data compression techniques, Distributor asserts that the process meets the requirements of this section.

##### **(6) Distribution of data/Encryption**

Distributor shall indicate if data encryption techniques are used. If Distributor uses data encryption techniques, Distributor asserts that the process meets the requirements of this section.

##### **(7) Distribution of data/Frequency of distribution**

Distributor asserts that any updates will be transmitted to their users within the time constraints described by this requirement.

##### **(8) Distribution of data/Distribution report**

Distributor shall provide an example of the distribution report described by this requirement.

##### **(9) Distribution of data/Additional data**

Distributor shall indicate if additional data is to be distributed with the NOAA ENC® data. If so, Distributor shall provide examples of how the data users will be informed as to the official and unofficial contents of the data as described in this requirement.

##### **(10) Distribution of data/Identification of contents**

Distributor shall provide examples of how the contents of the NOAA ENC® files will be identified to the users.

##### **(11) Use of NOAA emblem**

Distributor acknowledges that a separate request for the use of the NOAA emblem must be submitted according to the procedure described in § 995.28.

##### **(12) Limitation on Endorsements**

Distributor acknowledges that NOAA does not automatically, directly, or indirectly endorse any product or service provided, or to be provided, by Distributor, its successors, assignees, or licensees. Distributor shall not in any way imply that this certification is an endorsement of any such product or service without separate, written permission.

##### **(13) Correspondence and Applications/Requests for Certification**

Distributor acknowledges and agrees to all procedures and requirements described pertaining to the certification process.

##### **(14) Correspondence and Applications/Point of contact**

Distributor agrees to immediately notify the Government of any changes to point of contact information.

##### **(15) Auditing**

Distributor acknowledges that NOAA reserves the right to audit Distributor to ensure that these requirements are being met.

##### **(16) Termination of certification**

Distributor acknowledges the conditions leading to and procedures for the termination of certification as described in the requirements.

##### **(17) Term of certification**

Distributor acknowledges that the duration of certification is five years from the date of issuance.

##### **(18) Liability**

By signing this request for certification, Distributor pledges to indemnify and hold harmless the U.S. Government for any loss, claim, damage, or liability of any kind, the extent caused by the negligence of Distributor or its employees, arising out of the use by the Distributor, or any Party acting on its behalf or under its authorization, of NOAA ENC® data.

Signature of this request constitutes an acknowledgement by Distributor of ALL applicable terms and conditions described in the certification requirements.

Signed:

Title:

Date:

OMB Control # \_\_\_\_\_ Expires \_\_\_\_\_

Application for Certification as "Certified NOAA ENC Value Added Distributor"

Company Name  
Company Address  
Company Phone Number  
Company Fax Number  
Company E-Mail Address  
Point of Contact  
Point of Contact Address  
Point of Contact Phone Number  
Point of Contact Fax Number  
Point of Contact E-Mail Address

This is a request for the above named company (hereinafter referred to as Value Added Distributor) to be certified as a "Certified NOAA ENC Value Added Distributor" (CEVAD). This document describes how each of the requirements for certification is being met. Descriptive titles after each number in parenthesis correspond to section titles in the rule.

##### **(1) Registry of data users**

Include a description of the data user registry, including:

- (a) What data elements it contains, specifically showing how the required elements are included;
- (b) A hardcopy sample of the report that will be periodically submitted to NOAA;
- (c) A short description of how the registry is maintained.

##### **(2) Training of data users**

Include a description of any training and a copy of any documentation provided to

users that is intended to meet this requirement.

(3) Acquisition of data

Value Added Distributor asserts that all procedures described in this requirement for the acquisition of NOAA ENC® data for distribution are being followed.

(4) Quality Management System

Value Added Distributor shall provide a copy of the ISO 9001–2000 certification or certification of compliance with an equivalent program of quality management that covers the processes described in this section of the requirements.

(5) Conversion of NOAA ENC® files to other formats

Value Added Distributor asserts that all NOAA ENC® content and accuracy are preserved during the conversion process as described in this section of the requirements.

(6) Conversion of NOAA ENC® files to other formats/Software certification

Value Added Distributor shall provide a copy of the type approval certificate for the software used to convert the NOAA ENC® files to the Value Added Distributor's format.

(7) Conversion of NOAA ENC® files to other formats/Error reporting Value Added

Distributor asserts that they shall log and report any errors in the NOAA ENC® data detected during the conversion process. Value Added Distributor shall provide an example of the report format that they will use.

(8) Conversion of NOAA ENC® files to other formats/Format check

Value Added Distributor asserts that all data shall be checked for conformance with Value Added Distributor's own format specifications and shall test load the converted data as described in this section of the requirements.

(9) Distribution of data/Frequency of distribution

Value Added Distributor asserts that any updates will be transmitted to their users within the time constraints described by this requirement.

(10) Distribution of data/Distribution report

Value Added Distributor shall provide an example of the distribution report described by this requirement.

(11) Distribution of data/Additional data

Value Added Distributor shall indicate if additional data is to be distributed with the NOAA ENC® data. If so, Value Added Distributor shall provide examples of how the data users will be informed as to the official and unofficial contents of the data as described in this requirement.

(12) Distribution of data/Identification of contents

Value Added Distributor shall provide examples of how the contents of the NOAA ENC® files will be identified to the users.

(13) Format validation software testing

The validation software used by Value Added Distributor shall be tested according

to this requirement and the results stated in this section of the request for certification.

(14) Use of NOAA emblem

Value Added Distributor acknowledges that a separate request for the use of the NOAA emblem must be submitted according to the procedure described in § 995.28.

(15) Limitation on Endorsements

Value Added Distributor acknowledges that NOAA does not automatically, directly, or indirectly endorse any product or service provided, or to be provided, by Value Added Distributor, its successors, assignees, or licensees. Value Added Distributor shall not in any way imply that this certification is an endorsement of any such product or service without separate, written permission.

(16) Correspondence and Applications/Requests for Certification

Value Added Distributor acknowledges and agrees to all procedures and requirements described pertaining to the certification process.

(17) Correspondence and Applications/Point of contact

Value Added Distributor agrees to immediately notify the Government of any changes to point of contact information.

(18) Auditing

Value Added Distributor acknowledges that NOAA reserves the right to audit Value Added Distributor to ensure that these requirements are being met.

(19) Termination of certification

Value Added Distributor acknowledges the conditions leading to and procedures for the termination of certification as described in the requirements.

(20) Term of certification

Value Added Distributor acknowledges that the duration of certification is five years from the date of issuance.

(21) Liability

By signing this request for certification, Value Added Distributor pledges to indemnify and hold harmless the U.S. Government for any loss, claim, damage, or liability of any kind, the extent caused by the negligence of Value Added Distributor or its employees, arising out of the use by the Value Added Distributor, or any party acting on its behalf or under its authorization, of NOAA ENC® data.

Signature of this request constitutes an acknowledgement by Value Added Distributor of ALL applicable terms and conditions described in the certification requirements.

Dated: October 4, 2004.

**Richard W. Spinrad,**

*Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.*

[FR Doc. 04–23167 Filed 10–14–04; 8:45 am]

**BILLING CODE 3510-JE-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 996

[Docket No: 040908256425601]

RIN 0648–AS50

### Quality Assurance and Certification Program for NOAA Hydrographic Products

**AGENCY:** National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) has been mandated to develop and implement a quality assurance program that is equally available to all applicants, under which the Administrator may certify hydrographic products that satisfy standards promulgated by the Administrator. “Hydrographic products” are any publicly or commercially available products produced by a non-Federal entity that include or display hydrographic data. The Administrator proposes to fulfill this mandate by establishing procedures by which hydrographic products are proposed for certification; by which standards and compliance tests are developed, adopted, and applied for those products; and by which certification may be awarded or denied. These procedures would be the mandated Quality Assurance Program, and the implementation of the program would be the execution of those procedures for specific hydrographic products.

**DATES:** Comments must be received by November 15, 2004.

**ADDRESSES:** Comments in writing should be submitted to Director, Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East West Highway, Silver Spring, MD 20910. Written comments may be faxed to (301) 713–4019. Comments by e-mail should be submitted to [HydrographicProducts@noaa.gov](mailto:HydrographicProducts@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. David B. Enabnit, Office of Coast Survey, NOAA (N/CSx2), 1315 East-West Highway, Silver Spring, MD, 20910, (voice phone) 301–713–2770 x132, (fax phone) 301–713–4019, (e-mail) [Dave.Enabnit@noaa.gov](mailto:Dave.Enabnit@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

## Background

### Definitions

*Hydrographic products*—any publicly or commercially available product produced by a non-Federal entity that includes or displays hydrographic data.

*Hydrographic data*—information acquired through hydrographic or bathymetric surveying, photogrammetry, geodetic, geospatial, or geomagnetic measurements, tide and current observations, or other methods, that is used in providing hydrographic services.

*Hydrographic services*—hydrographic services means:

- The management, maintenance, interpretation, certification, and dissemination of bathymetric, hydrographic, geodetic, geospatial, geomagnetic, and tide and current information, including the production of nautical charts, nautical information databases, and other products derived from hydrographic data;
- The development of nautical information systems; and
- Related activities.

### The Act

The Hydrographic Services Improvement Act of 1998, as amended by the Hydrographic Services Improvement Act Amendments of 2002 (codified as 33 U.S.C. 892b), directs:

#### 1. IN GENERAL—The Administrator—

A. By not later than 2 years after the date of enactment of the Hydrographic Services Improvement Act Amendments of 2002, shall, subject to the availability of appropriations, develop and implement a quality assurance program that is equally available to all applicants, under which the Administrator may certify hydrographic products that satisfy the standards promulgated by the Administrator under section 303(a)(3) of the Act;

B. May authorize the use of the emblem or any trademark of the Administration on a hydrographic product certified under subparagraph (A); and

C. May charge a fee for such certification and use.

Section 303(a)(3) referenced above states that the Administrator shall “promulgate standards for hydrographic services provided by the administration.”

### Statement of Policy

NOAA will act in accordance with the following policies in fulfilling its Quality Assurance Program

responsibilities under the Hydrographic Services Improvement Act.

1. NOAA interprets the Act as intending to stimulate the development of hydrographic products by the private sector. The intent of NOAA's participation in this private sector activity is to provide the public a measure of confidence in the content, quality, and adherence to published standards of the resulting hydrographic products. NOAA interprets the Act in a broad sense. Therefore, “standards” and “quality assurance program” are considered to be generic terms that apply to any means of satisfying the intent of the Act and the intent of NOAA's participation, and that are within NOAA's authorities.

2. Standards, and quality assurance tests and procedures, will preferably be written in collaboration with those affected, not just written and promulgated by NOAA. In some instances, NOAA may adopt an existing standard or quality assurance program, rather than originate one. NOAA may develop standards and quality assurance tests on its own initiative should, for example, it be deemed beneficial for those standards and tests to be established before the appearance of a particular hydrographic product. This approach may be used to stimulate the production of a product that NOAA anticipates would be beneficial.

3. The level to which standards are developed, and to which quality assurance is performed, may vary for different hydrographic products. For example, certification for manufacturers making exact copies of NOAA products may be implemented in a substantially different manner from the certification of a complex cartographic product. NOAA considers all such “standards” and “certifications” as meeting the intent of the Act.

4. NOAA will work, to the extent practicable, through existing, recognized, standards and certification bodies. This will permit the use of proven methods of developing, documenting, and implementing standards and certification. It will leverage NOAA's resources with those of such bodies. It will provide a more widely accepted result than had NOAA promulgated a standard solely under its own name.

5. NOAA will establish the required Quality Assurance Program for hydrographic products. The Quality Assurance Program will be general procedures that apply to all hydrographic products, and specific tests and procedures that apply to specific hydrographic products. The specific quality assurance tests and

procedures for a particular hydrographic product will be based on the standards identified by NOAA or written collaboratively with the affected parties.

6. Certification of a specific hydrographic product under the Quality Assurance Program will be at the option of NOAA. However, certification will be the goal in cases where NOAA decides to write or adopt standards. Any non-Federal entity will be permitted to submit for certification hydrographic products that it asserts are compliant with the NOAA-adopted standards.

7. Certification of products under the Program will mean that the hydrographic product has been found to be compliant with the NOAA-adopted standards for that particular hydrographic product. Certification conveys no express or implied warranty as to the merchantability or fitness for a particular purpose; conveys no express or implied liability on the part of the Government of the United States for the hydrographic products; and conveys no automatic, direct or indirect NOAA endorsement of any product or service. NOAA may audit hydrographic products it has certified, and may decertify hydrographic products based on its findings.

8. NOAA does not intend to write standards and perform quality assurance for every hydrographic product submitted by a non-Federal entity. NOAA will select those deemed appropriate for standards and certification by taking into account:

- The magnitude of the public benefit and enhancement of public safety that would be achieved compared to the commitment of resources that would be required;
- The breadth of support for standards and certification among all the affected communities;
- The practicality of writing and enforcing an effective standard and compliance tests;
- The availability of suitable, similar products that may already meet the needs of the public;
- NOAA's expertise related to that needed to write an appropriate standard;
- Availability of resources; and
- Other relevant criteria as they become apparent.

In general, NOAA does not intend to write standards and certify products that would be used to meet the nautical chart and publications carriage requirements mandated in the Code of Federal Regulations and elsewhere. The federal government already provides official products for this purpose, and there are valid safety reasons for

maintaining a single complying product for regulated carriage.

9. Use of the NOAA emblem on certified hydrographic products will require separate written permission. Use of the NOAA emblem must satisfy an interest of the Agency, and must not result in embarrassment to the Agency. If the NOAA emblem is used on products that include other data or products, clear indication will be required as to what is NOAA certified. The inclusion of other data or products will not constitute any endorsement of, or favoritism toward, the other data or products by NOAA.

10. NOAA may charge for its standards and certification activities such sums as may be permitted or required under this Act, or under other statutory authorities.

11. NOAA will operate the Quality Assurance Program in an open and public manner. All standards, tests, and procedures will be publicly available. The public will be given ample public notification of activities under the Quality Assurance Program, and will be given ample opportunity to comment and have their comments heard. This opportunity to participate in the Quality Assurance Program and the opportunity to submit hydrographic products for certification under that Program will be equally available to all.

12. In all matters, NOAA will proceed in a manner that maximizes public safety.

#### *Discussion of Selected Sections of the Policy*

##### Paragraph 1

NOAA interprets the Act as an attempt to increase the richness of the suite of hydrographic products available to the public, and to ensure the safety of those products. In addition, NOAA interprets the Act to include "services" as meeting the definition of "hydrographic products," and may choose to write standards, quality assurance tests and procedures, and to certify appropriate services. Nautical chart updating services, or an electronic navigational chart distribution service, are examples of services that NOAA may consider a "hydrographic product" under the Act.

Other tools within NOAA's authority may be used to meet the purposes of the Act. Depending on the complexity of the hydrographic product, and the amount of risk the public would be exposed to, NOAA reserves the right to select any authorized means of establishing new products and providing a measure of confidence in the content, quality, and adherence to standards for those

products. Thus, for purposes of accountability under the Act, NOAA is interpreting "standards," "quality assurance," and "certification" as generic terms describing an outcome rather than as a specific formalism or document. For example, some non-Federal entities may intend to reproduce exactly NOAA products such as the Tide Tables. In this case, a "standard" may be a simple agreement, in which the manufacturer agrees to certain standards of copy quality. Further, because the complexity is low, self-certification might be used as the means of compliance testing. Other such authorities available to NOAA that may be used include: business licenses, Agent Agreements, no-cost contracts, self-certification, adoption of industry standards, and the use of existing certification organizations.

##### Paragraph 2

Participation by the affected communities in writing standards and compliance tests provides an important guarantee that there is broad need for standards and certification, and that the resulting standard and certification meet the needs of the affected communities. Relevant communities might include: manufacturers, users, regulators, resellers, developers of products that use certified hydrographic products such as datasets, and manufacturers of competing or substitute products.

Participation in the drafting of standards and quality assurance tests and procedures must be substantive and continuing by the designated members of the affected communities. The responsibility will lie with the non-Federal entity submitting a hydrographic product for certification to propose a broadly based group of acknowledged representatives of affected groups, and to secure their participation in the writing of standards and compliance tests.

##### Paragraph 6

The Act leaves the certification of hydrographic products as optional for NOAA. The assumption will be, however, that if NOAA undertakes to write standards, it also intends to offer certification of the resulting hydrographic products. In general, NOAA will not undertake to write standards and compliance tests if it can foresee that certification will not be offered.

The decision to offer certification will be made on a case-by-case basis. Circumstances may arise that cause standards to be written, but certification to not be offered. Such circumstances might include:

- A resulting standard for which NOAA lacks confidence in the safety implications of products that might meet that standard;
- Lack of consensus among the affected organizations writing the standard and compliance tests;
- Failure of adoption of the draft standards by the participating standards-writing body;
- Standards that negatively impact the intent of the Act, such as those that might exclude existing, suitable products; or standards that benefit a single company;
- Adopted standards that are specious; or
- Other relevant reasons as they become apparent.

##### Paragraph 7

NOAA does not intend to certify products as suitable for any specific purpose such as for use as a backdrop in Automated Identification Systems. Certification only means that there is an adopted NOAA standard, documented compliance tests; and that the subject hydrographic product has been through the tests and was determined to be compliant with the standard.

##### Paragraph 8

NOAA does not interpret the Act as merely a way to provide manufacturers with a marketing claim for their product, or as a means for one manufacturer to differentiate his product from the competition, although that might be a resulting effect. Neither does NOAA interpret the Act as intending to result in "private standards" that may only apply to one manufacturer's product.

In addition, NOAA interprets the Act as intending to call forth new products, not substitutes for official ones being provided by the Administration. In general, NOAA does not intend to write standards and certify products that would be used to meet the nautical chart and publications carriage requirements mandated in the Code of Federal Regulations and elsewhere. The federal government already provides official products for this purpose, and there are valid safety reasons for maintaining a single, official nautical chart or publication where federal regulations mandate carriage, and for not certifying private products for that same purpose. These reasons include:

- Removing any confusion as to what products satisfy the federal regulations;
- Having all vessels making navigation decisions on exactly the same information, particularly in meeting situations or at night;



- Guaranteeing the timeliness and accuracy of updates to official charting products and their distribution;
- Removing ambiguity as to the status of non-certified data that may be included on or with certified private hydrographic products;
- Liability for other information when packaged with a certified “hydrographic product;” and
- The impracticality of NOAA policing all substitute official products—products on which data changes weekly.

Exceptions to this intention might include cases where NOAA specifically prepares a carriage-compliant product for manufacture and distribution by the non-Federal entities.

#### Paragraph 9

The presumption will be that use of the NOAA emblem will be permitted if NOAA proceeds with standards and certification. However, the use of the NOAA emblem will be carefully monitored. In particular, it will be monitored to insure that the use of the emblem is not done in a manner to imply the endorsement of any manufacturer; any other data, service, or product that may be packaged with a certified hydrographic product; or any particular use of a certified hydrographic product, and to monitor that its use not bring discredit upon the Agency or the Department.

#### Classification

##### A. Executive Order 12866

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

##### B. Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certifies to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule will not have a significant, negative economic impact on a substantial number of small entities. The purpose of this rule is to develop and implement a quality assurance program that is equally available to all applicants, under which the Administrator of NOAA may certify hydrographic products that satisfy standards promulgated by the Administrator. “Hydrographic products” are any publicly or commercially available product produced by a non-Federal entity that includes or displays hydrographic data. The Administrator proposes to fulfill this mandate by establishing procedures by which hydrographic products are

proposed for certification; by which standards and compliance tests are developed, adopted, and applied for those products; and by which certification may be awarded or denied. NOAA is required to develop this Quality Assurance Program under the authority of 33 U.S.C. 892b.

The Small Business Administration guideline to separate small from large businesses is \$4 million for Mapmaking firms and \$5 million for Navigational Services to Shipping and Other Support Activities for Water Transportation. NOAA is unable to determine the total number of small entities that will be affected by this rule, as it does not specifically track this type of information. However, based upon general knowledge of the industry, NOAA believes the majority of the entities affected will be small businesses.

The estimated economic impact to small entities for submitting hydrographic products under this program is not expected to be greater than \$600 per product submitted for labor to prepare the application. In addition, it is expected that there will be an average charge of \$5,000 per product submitted for compliance testing. This proposed rule is voluntary. Only those applicants who wish to submit hydrographic products and have them certified need apply. NOAA does not believe this cost will hurt small companies, and the estimated costs incurred should be offset through the benefits in increased sales of the product because of its “certified” status or else private companies would not choose to submit their products to this voluntary program.

##### C. Paperwork Reduction Act

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval.

The following requirements have been submitted to OMB for approval: 4 hours to prepare the application to have standards and compliance tests developed; 4 hours to prepare the application to have a specific hydrographic product certified; and 4 hours for an estimated, single request for NOAA to reconsider a decision made under the program. These estimates include the time for reviewing instructions, searching existing data sources, writing the application information and/or request for reconsideration, and for sending the applications to NOAA.

Public comment is sought regarding whether these proposed collections of

information are necessary for the proper performance of the functions of the agency and whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Director, Office of Coast Survey, National Ocean Service, NOAA (see **ADDRESSES**) and to David Rostker at the Office of Information and Regulatory Affairs, OMB, by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or by fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

There are no duplicative, overlapping, or conflicting Federal rules associated with this proposed rule.

#### List of Subjects in 15 CFR Part 996

Navigation (water), Hydrographic products, Certification requirements.

For the reasons stated in the preamble, NOS proposes to amend 15 CFR chapter IX by adding part 996 to read as follows:

#### **SUBCHAPTER F—QUALITY ASSURANCE AND CERTIFICATION REQUIREMENTS FOR NOAA HYDROGRAPHIC PRODUCTS AND SERVICES**

#### **PART 996—QUALITY ASSURANCE AND CERTIFICATION REQUIREMENTS FOR NOAA HYDROGRAPHIC PRODUCTS AND SERVICES**

##### **Subpart A—General**

Sec.

- 996.1 Purpose and scope.
- 996.2 Definitions.
- 996.3 Fees.
- 996.4 Liability.
- 996.5 Alterations.

##### **Subpart B—The Quality Assurance Program for Hydrographic Products**

- 996.10 Submission and selection of hydrographic products for the development of standards and compliance tests.
- 996.11 Development of standards for a hydrographic product or class.
- 996.12 Development of standards compliance tests for a hydrographic product or class.
- 996.13 Determination of whether to offer certification for a hydrographic product or class.



**Subpart C—Certification of a hydrographic product and decertification.**

- 996.20 Submission of a hydrographic product for certification.
- 996.21 Performance of compliance testing.
- 996.22 Certification.
- 996.23 Audit and decertification of hydrographic products.

**Subpart D—Other Quality Assurance Program Matters**

- 996.30 Use of the NOAA emblem.
- 996.31 Termination of the Quality Assurance Program.
- 996.32 Appeals.
- 996.33 Acceptance of program by non-Federal entities.

**Authority:** 33 U.S.C. 892b.

**Subpart A—General****§ 996.1 Purpose and scope.**

The National Oceanic and Atmospheric Administration (NOAA) has been mandated to develop and implement a quality assurance program that is equally available to all applicants, under which the Administrator may certify hydrographic products that satisfy standards promulgated by the Administrator. "Hydrographic products" are any publicly or commercially available products produced by a non-Federal entity that include or display hydrographic data. The Administrator proposes to fulfill this mandate by establishing procedures by which hydrographic products are proposed for certification; by which standards and compliance tests are developed, adopted, and applied for those products; and by which certification may be awarded or denied. These procedures would be the mandated Quality Assurance Program, and the implementation of the program would be the execution of those procedures for specific hydrographic products.

**§ 996.2 Definitions.**

*Agency* means the National Oceanic and Atmospheric Administration.

*Applicant* means a non-Federal entity that is submitting a hydrographic product to the Quality Assurance Program for certification.

*Certification* means a determination made by NOAA that a hydrographic product submitted by a non-Federal entity has met the requirements established by NOAA for a particular hydrographic product or class.

*Department* means the Department of Commerce.

*Hydrographic data* means information acquired through hydrographic or bathymetric surveying, photogrammetry, geodetic, geospatial, or geomagnetic measurements, tide and

current observations, or other methods, that is used in providing hydrographic services.

*Hydrographic product* means any publicly or commercially available product produced by a non-Federal entity that includes or displays hydrographic data.

*Hydrographic product class* means a group of hydrographic products with similar traits, attributes, purposes, or users.

*Hydrographic services* means:

- The management, maintenance, interpretation, certification, and dissemination of bathymetric, hydrographic, geodetic, geospatial, geomagnetic, and tide and current information, including the production of nautical charts, nautical information databases, and other products derived from hydrographic data;
- The development of nautical information systems; and
- Related activities.

*Quality Assurance Program* means a set of procedures by which hydrographic products are proposed for certification; by which standards and compliance tests are developed, and, if suitable, are adopted by NOAA for those products or their product class; and by which certification of individual products may be awarded or denied.

*Quality Assurance Program implementation* means the execution of the Quality Assurance Program procedures for specific hydrographic products.

*Sponsor* means a non-Federal entity that is submitting a hydrographic product to the Quality Assurance Program for the development of standards and compliance tests.

**§ 996.3 Fees.**

NOAA may charge for its Quality Assurance Program activities such sums as may be permitted or required under this Act, or under other statutory authorities. Such sums are non-refundable. NOAA will attempt to identify any such charges upon first submission of a hydrographic product. However, the intent to charge and the amounts may change. NOAA will promptly notify the sponsor of any such changes, and permit the sponsor to withdraw hydrographic products from consideration under the Quality Assurance Program should they so choose.

**§ 996.4 Liability.**

The Government of the United States shall not be liable for any negligence by producers of hydrographic products certified under this part.

**§ 996.5 Alterations.**

NOAA reserves the right to change these requirements at any time.

**Subpart B—The Quality Assurance Program for Hydrographic Products****§ 996.10 Submission and selection of hydrographic products for the development of standards and compliance tests.**

(a) Any non-Federal entity may submit a hydrographic product to be considered for the development of standards and compliance tests under this Quality Assurance Program.

(b) Submission shall be made to the Quality Assurance Program address below, or to such other address as may be indicated in the future:

Director (N/CS), ATTN: Hydrographic Product Quality Assurance Program, Office of Coast Survey, NOAA, 1315 East West Highway, Silver Spring, MD 20910.

(c) The submission shall include

- (1) Name and description of the proposed hydrographic product.
- (2) The non-Federal entity submitting the product for the development of standards and compliance tests, and contact information for that entity. This non-Federal entity shall be known as the sponsor.

(3) The names and contact information of proposed representatives of the affected communities who have committed to participate substantively in the writing of standards and compliance tests. Affected communities might include: manufacturers, users, regulators, resellers, developers of products that use certified hydrographic products such as datasets, and manufacturers of competing or substitute products.

(4) The names and contact information of the standards setting body, and the compliance testing body under whose authority it is proposed that the standards and compliance tests will be written and adopted.

(5) Information deemed relevant by the sponsor for NOAA to consider in deciding whether to proceed with the development of standards, compliance tests, and certification. Such information should address at a minimum:

(i) The type and magnitude of the public benefits and enhancement of public safety that would be achieved;

(ii) The breadth of support for standards and certification among all the affected communities;

(iii) The practicality of writing and enforcing an effective and appropriate standard;

(iv) The availability of suitable, similar products that may already meet the needs of the public; and

(v) The required expertise needed to write an appropriate standard.

(d) NOAA may, at its option, define a hydrographic product class of which the proposed hydrographic product is a specific instance. Standards and compliance tests may then be prepared for the class rather than for an individual non-Federal entity's specific product.

(e) NOAA shall publicize, in the **Federal Register** or by other appropriate means, the hydrographic product or class in order to solicit comments on the proposal that standards and compliance tests be written and certification be offered for that hydrographic product or class. Comments might include, but are not limited to, general information; statements of interest in participating in the development of standards and compliance tests; or objections to acceptance of the hydrographic product or class into this Quality Assurance Program. Instructions for commenting and the duration of the comment period will be included in the announcement.

(f) NOAA shall decide, if its other obligations permit, within 60 calendar days of the close of the comment period whether to proceed with the development of standards, compliance tests, and certification for the proposed hydrographic product or class. NOAA may request further information, and shall have additional time as required to consider the information once received. NOAA's decision on whether to proceed shall be based on the following criteria.

(1) The magnitude of the public benefit and enhancement of public safety that would be achieved compared to the commitment of federal resources that would be required;

(2) The breadth of support for standards and certification among all the affected communities;

(3) The practicality of writing and enforcing an effective and appropriate standard;

(4) The availability of suitable, similar products that may already meet the needs of the public;

(5) NOAA's expertise related to the expertise needed to write an appropriate standard;

(6) Availability of resources; and

(7) Other relevant criteria as they become apparent.

(g) NOAA's decision as to whether the proposed hydrographic product or class is accepted into the Quality Assurance Program shall be publicly announced in the **Federal Register** or by other appropriate means, and a written notification shall be provided to the sponsor. The response shall include NOAA's reason for its decision based on the criteria enumerated above.

(h) Any party, including the sponsor, shall have an opportunity to request reconsideration of NOAA's decision.

Said request shall be submitted in writing, to the Quality Assurance Program address, postmarked within 30 days of NOAA's announcement of its decision, and shall contain written material supporting the requestor's position. NOAA shall have, if its other obligations permit, 60 calendar days from the receipt of a request for reconsideration to either deny the request, or to reconsider and announce its decision.

(i) NOAA's decision, either the original decision if unappealed within 30 days, or the decision after the request for reconsideration, shall be considered final.

(j) NOAA itself may choose to identify a hydrographic product or class, which may or may not yet exist, but for which it intends to adopt standards, compliance tests, and to offer certification. In such cases, NOAA will be considered the sponsor. The procedures to be followed for NOAA-sponsored hydrographic products or classes shall be the same as for those sponsored by non-Federal entities, including the procedures for announcement, comment, and reconsideration.

#### **§ 996.11 Development of standards for a hydrographic product or class.**

(a) NOAA shall work, to the extent practicable, through existing, recognized, standards bodies in the writing and adopting of standards for a hydrographic product or class that NOAA has accepted into this program. It shall be the responsibility of the sponsor to propose an appropriate standards writing body. NOAA may accept this body at its discretion, or may select an alternate body. NOAA will then undertake, jointly with the sponsor and acknowledged representatives of the affected communities, to submit the proposal for writing standards to, and to secure the cooperation of, the selected standards writing body.

(b) Once accepted as a work item by the standards writing body, NOAA shall undertake, jointly with representatives of the affected community, members of the standards body, other governmental representatives, and the sponsor as appropriate, to write standards for the hydrographic product or class according to the practices of the standards body and the technical needs of the product. Participation in the writing of standards shall be determined according to the procedures of the standards writing body.

(c) NOAA shall then undertake, jointly with representatives of the affected community, members of the standards body and the body itself, other governmental representatives, and the sponsor as appropriate, to have the resulting standard officially adopted by the standards body according to the procedures of that body.

(d) NOAA may, at its option, proceed without the participation of an existing, recognized, standards body should it so choose. Such action might be taken, for example, if there were no appropriate standards body. In this eventuality, NOAA shall adhere to the following general procedure.

(1) Announce, in the **Federal Register** or by other appropriate means, NOAA's intention to organize and chair a working group to write and publish standards for the proposed hydrographic product or class;

(2) Solicit, via the **Federal Register** or by other appropriate means, participation and select, reject, and/or revoke permission to participate as NOAA deems appropriate so as to proceed in an orderly and representative manner in writing a standard;

(3) Initiate, schedule, host, and chair, or designate a chair for, the work of the working group;

(4) Circulate, via the **Federal Register** or by other appropriate means, the drafts of the working group;

(5) Announce, via the **Federal Register** or by other appropriate means, the NOAA proposed standard and provide an opportunity for public comment;

(6) Announce, via the **Federal Register** or by other appropriate means, and make available as a standard, the final version of the standard; and

(7) Provide the necessary administrative support.

(e) Alternatively, NOAA may at its option, proceed by writing a standard by itself. Such action might be used, for example, in cases where the standard is obvious. Producing exact copies of existing NOAA products might be one such case. Once written, this NOAA-authored standard shall be made publicly available for comment, and comments shall be considered before NOAA publishes the final standard.

(f) At the conclusion of the standards writing, whether through an existing standards body, by a NOAA-convened working group, or by NOAA itself, NOAA shall consider the resulting standard and either adopt or reject the standard as the NOAA Quality Assurance Program Standard for the particular hydrographic product or class. NOAA's decision shall be

publicly announced in the **Federal Register** or by other appropriate means.

(g) Any party may request NOAA to reconsider its decision to adopt or reject the standards by submitting its request in writing to the Quality Assurance Program address within 30 days of NOAA's announcement of its decision. NOAA shall have, if its other obligations permit, 60 calendar days from the receipt of a request for reconsideration to either deny the request, or to reconsider and announce its decision. NOAA's original decision if unappealed within 30 days, or its decision upon reconsideration shall be considered final.

**§ 996.12 Development of standards compliance tests for a hydrographic product or class.**

(a) NOAA shall work, to the extent practicable, through existing, recognized, compliance testing bodies in the writing and adopting of compliance tests for a hydrographic product or class. It shall be the responsibility of the sponsor to propose an appropriate compliance testing body. NOAA may accept this body at its discretion, or may select an alternate body. NOAA will then undertake, jointly with the sponsor and acknowledged representatives of the affected communities, to secure the cooperation of the selected compliance testing body.

(b) NOAA shall undertake, jointly with representatives of the affected community, members of the compliance testing body, other governmental representatives, and the sponsor as appropriate, to write compliance tests for the hydrographic product class according to the practices of the compliance testing body and the Quality Assurance Program standard adopted by NOAA. Participation in the writing of compliance tests may be determined according to the procedures of the compliance testing body.

(c) NOAA shall then undertake, jointly with representatives of the affected community, members of the compliance testing body and the body itself, other governmental representatives, and the sponsor as appropriate, to have the resulting compliance tests adopted according to the procedures of that body.

(d) NOAA may, at its option, proceed without the participation of an existing, recognized, compliance testing body should it so choose. Such action might be taken, for example, if there were no appropriate compliance testing body. In this eventuality, NOAA will adhere to the following general procedure:

(1) Announce, in the **Federal Register** or by other appropriate means, NOAA's intention to organize and chair a working group to write and publish compliance tests for the hydrographic product or class;

(2) Solicit, via the **Federal Register** or by other appropriate means, participation and select, reject, and/or revoke permission to participate as NOAA deems appropriate so as to proceed in an orderly and representative manner in writing compliance tests;

(3) Initiate, schedule, host, and chair, or designate a chair for, the work of the working group;

(4) Circulate, via the **Federal Register**, or by other appropriate means, the drafts of the working group;

(5) Announce, via the **Federal Register** or by other appropriate means, a NOAA proposed final version of the compliance tests and provide an opportunity for public comment;

(6) Announce, via the **Federal Register** or by other appropriate means, and make available the final version of the compliance tests, and

(7) Provide the necessary administrative support.

(e) Alternatively, NOAA may, at its option, proceed by writing compliance tests by itself. Such action might be used, for example, in cases where the tests are obvious. Producing exact copies of existing NOAA products might be one such case. Once written, these NOAA-authored tests shall be made publicly available for comment, and comments shall be considered before NOAA publishes the final compliance tests.

(f) At the conclusion of the compliance test writing, whether through an existing body, by a NOAA-convened working group, or by NOAA itself, NOAA shall consider the resulting compliance tests and either adopt or reject them as the NOAA Quality Assurance Program compliance tests for the particular hydrographic product standard. NOAA's decision shall be publicly announced in the **Federal Register** or by other appropriate means.

(g) Any party may request NOAA to reconsider its decision to adopt or reject the compliance tests by submitting its request in writing to the Quality Assurance Program address within 30 days of NOAA's announcement of its decision. NOAA shall have, if its other obligations permit, 60 calendar days after the receipt of a request for reconsideration to either deny the request, or to reconsider and announce its decision. NOAA's original decision if unappealed within 30 days, or its

decision upon reconsideration shall be considered final.

**§ 996.13 Determination of whether to offer certification for a hydrographic product or class.**

(a) Certification of a hydrographic product or class shall be at the option of NOAA. NOAA may decide at any time whether or not to offer certification for a product or class. However, it is most likely that a determination will be made only after a non-Federal entity has submitted a specific product for certification. NOAA's decision shall be based on the following criteria:

(1) The suitability of the adopted standards and tests for their intended purpose;

(2) The availability of a qualified entity to perform the compliance tests;

(3) Availability of resources; and

(4) Other relevant criteria as they become apparent.

(b) NOAA's decision as to whether certification for a hydrographic product or class is offered shall be publicly announced in the **Federal Register** or by other appropriate means.

(c) Any entity may request NOAA to reconsider its decision to offer or not offer certification by submitting its request in writing to the Quality Assurance Program address within 30 days of NOAA's announcement of its decision. NOAA shall have, if its other obligations permit, 60 calendar days after the receipt of a request for reconsideration to either deny the request, or to reconsider and announce its decision.

(d) NOAA's original decision if unappealed within 30 days, or its decision upon reconsideration, shall be considered final.

**Subpart C—Certification of a Hydrographic Product and Decertification.**

**§ 996.20 Submission of a hydrographic product for certification.**

(a) Upon adoption by NOAA of standards and compliance tests, any non-Federal entity may submit a hydrographic product for certification under a particular standard. This non-Federal entity shall be known as the applicant. Submission shall be made in writing to the Quality Assurance Program address. The submission shall include:

(1) Name and description of the hydrographic product and its product class if any;

(2) Identification and contact information for the non-Federal entity submitting the product for certification.

(3) The identification of the standard and compliance tests adopted by this

Quality Assurance Program under which the hydrographic product is to be certified;

(4) A proposed, qualified, compliance testing body to perform the compliance tests, which NOAA may accept at its discretion, or for which NOAA may select an alternative testing body;

(5) Other information deemed relevant by the sponsor or requested by NOAA.

#### **§ 996.21 Performance of compliance testing.**

(a) NOAA and the applicant shall submit the applicant's hydrographic product to the testing body for performance of the compliance tests. That body shall determine compliance or non-compliance of the hydrographic product with the NOAA-adopted standard, and shall provide to NOAA written documentation stating the results of the compliance tests according to its usual practices.

(b) Alternatively, NOAA may choose, at its option, to perform, have performed by a NOAA-designated entity, or waive the compliance tests for a hydrographic product. This alternative may be used, for example, when there is no qualified entity to perform the compliance tests, where the compliance tests are simple, or when self-certification of compliance would be appropriate.

(c) Items failing the compliance tests may be changed by the applicant and retested. Items passing the compliance test upon retest shall be deemed compliant as if they had passed said tests initially.

#### **§ 996.22 Certification.**

(a) A hydrographic product that has passed the compliance tests shall automatically be considered for certification by NOAA. NOAA shall make its certification determination, if its other obligations permit, within 60 calendar days following receipt of the compliance test results. NOAA shall make a certification determination based upon the following criteria:

(1) The results of the compliance tests;

(2) The potential for the hydrographic product to impair public safety;

(3) Successful completion of any administrative requirements, including the payment of required fees, as may be specified by NOAA;

(4) The potential for certification to cause embarrassment to the Agency or the Department;

(5) Other relevant criteria as they become apparent

(b) Hydrographic products receiving a certification determination in the affirmative shall be designated as

“certified” by NOAA. NOAA shall provide a written document to the sponsor indicating such, and shall announce its determination in the **Federal Register** or by other appropriate means. Certification shall mean that the hydrographic product has been found to be in compliance with the NOAA-adopted standard for that hydrographic product or class. Certification conveys no express or implied warranty as to the merchantability or fitness for a particular purpose; conveys no express or implied liability on the part of the Government of the United States for the hydrographic products; and conveys no automatic, direct or indirect NOAA endorsement of any product or service.

(c) Certification shall be for a term of 3 years unless otherwise specified by the Administrator.

#### **§ 996.23 Audit and decertification of hydrographic products.**

(a) NOAA may audit hydrographic products it has certified. NOAA may conduct audits without advance notification. However, visits to companies' facilities will be scheduled. Audits may include, but are not limited to:

(1) The producing companies as it may affect the certified product;

(2) Certified products;

(3) Processes used in making, distributing, and marketing certified products;

(4) Use of the NOAA emblem;

(5) Examination of manufacturers' public claims about certified hydrographic products;

(6) Other relevant criteria as they become apparent.

(b) NOAA may decertify a hydrographic product based on the findings of an audit. In general, a hydrographic product may be decertified if:

(1) The results of an audit indicate that the product no longer meets the standards under which it was certified;

(2) The product has been substantively changed from the product that was tested and certified;

(3) Implied or actual claims about the product, and/or other data or products linked to the product, are judged by NOAA to be untrue or misleading;

(4) The NOAA emblem was improperly or inappropriately displayed;

(5) Other relevant reasons as they become apparent.

(c) The entity producing the certified hydrographic product shall be notified in writing of NOAA's intent to decertify that product. Said entity shall have 30 days to request reconsideration of that intended action in writing to the Quality

Assurance Program address. Said request shall contain the identification of the hydrographic product, the requestor, and sufficient information for NOAA to make a determination on the request for reconsideration.

Alternatively, the entity may correct the deficiencies cited by NOAA within 30 days, notify NOAA in writing at the Quality Assurance Program address of the corrective action taken, and provide sufficient evidence for NOAA to judge the correctness and effectiveness of the corrective action taken.

(d) If a request for reconsideration is submitted, or if the producing entity asserts that the deficiencies have been corrected, NOAA shall have 60 calendar days, if its other obligations permit, to consider the request for reconsideration or the corrective action, at which time NOAA shall issue its decertification decision. The decision and NOAA's reason for its action shall be made public in the **Federal Register** or by other appropriate means, and the producing entity shall be notified in writing.

(e) NOAA's decertification, if unappealed or uncorrected within 30 days, shall be considered final. NOAA shall notify the producing entity of this action in writing, and announce the decertification in the **Federal Register** or by other appropriate means.

(f) Upon decertification, manufacturers shall discontinue all claims of certification, and shall discontinue use of the NOAA emblem.

#### **Subpart D—Other Quality Assurance Program Matters**

##### **§ 996.30 Use of the NOAA emblem.**

(a) Use of the NOAA emblem on certified hydrographic products requires separate written permission. Use of the NOAA emblem must satisfy an interest of the Agency, and must not result in embarrassment to the Agency or the Department. If the NOAA emblem is used on products that include other data or products, clear indication shall be made as to what is NOAA certified, and what is not NOAA certified. The inclusion of other data or products will not constitute any endorsement of, or favoritism toward, the other data or products by NOAA. Requests for use of the NOAA emblem shall be submitted in writing to the Quality Assurance Program address, and shall include:

(1) Name and description of the hydrographic product(s) on which the emblem will be displayed.

(2) Name and contact information for the entity requesting use of the NOAA emblem.

(3) Exact samples of all uses intended for the NOAA emblem including text claims with, within, or associated with the hydrographic product, its packaging, and advertising that a reasonable person might associate with the NOAA emblem.

(4) Proof of NOAA certification.

(5) Other relevant information as may later be specified.

#### **§ 996.31 Termination of the Quality Assurance Program.**

(a) NOAA reserves the right to terminate the Quality Assurance Program for a particular hydrographic product or class at any time before certification is awarded if it is deemed to be in the public interest to do so. NOAA shall give written notification to the sponsor and other interested parties should it decide to exercise this option, and shall state the reasons for its action. Reasons for termination may include, but are not limited to:

(1) The inability of the standards-drafting group to reach a consensus on the content of the standard;

(2) Valid objections to the existence of NOAA-certification of a particular hydrographic product;

(3) A negative impact on public safety should the hydrographic product receive certification;

(4) Other relevant reasons as they become apparent.

(b) The sponsor or other interested parties shall have 30 days to request a reconsideration of the termination action. Said request shall be in writing to the Quality Assurance Program address, and shall include written material supporting the appeal. NOAA shall have, if its other obligations permit, 60 calendar days from the receipt of a request for reconsideration to either deny the request, or to reconsider and announce its decision.

(c) NOAA's decision, either the original decision if unappealed within 30 days, or the decision after the request for reconsideration, shall be considered final.

#### **§ 996.32 Appeals.**

(a) Any entity may appeal a final decision made by the Agency under this Quality Assurance Program. Said appeal shall be submitted in writing to the Quality Assurance Program address, and shall contain at least:

(1) Identification and contact information of the appealing entity;

(2) A statement that this is an appeal to a final decision of the Quality Assurance Program;

(3) A description of what decision is being appealed;

(4) A thorough but concise argument as to why the requestor believes the

Quality Assurance Program decision being appealed should be set aside.

(5) Other information as may later be determined to be relevant.

(b) Appeals shall be arbitrated by the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA, using procedures to be established at the time of the appeal, and which shall be appropriate to the nature and circumstances of the appeal. The determination from this arbitration shall be final.

#### **§ 996.33 Acceptance of program by non-Federal entities.**

By their voluntary entrance or participation in this Quality Assurance Program or its activities, all parties acknowledge and accept the procedures established by this program, including the finality of decisions. All parties acknowledge and accept that information submitted to NOAA under this Program shall be deemed to be in the public domain, and no representation is made as to the protection of confidential, proprietary or otherwise restricted information.

Dated: October 7, 2004.

**Richard W. Spinrad,**

*Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.*

[FR Doc. 04-23166 Filed 10-14-04; 8:45 am]

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## **DEPARTMENT OF ENERGY**

### **Federal Energy Regulatory Commission**

#### **18 CFR Part 35**

**[Docket No. RM04-14-000]**

### **Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority**

Issued October 6, 2004.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission), acting pursuant to section 206 of the Federal Power Act (FPA),<sup>1</sup> is proposing to amend its regulations and to modify the market-based rate authority of current market-based rate sellers to establish a reporting obligation for changes in status that apply to public utilities authorized to make wholesale power sales in interstate commerce at market-based rates. In particular, the

Commission proposes to amend its regulations to establish guidelines concerning the types of events that trigger this reporting obligation and to modify the market-based rate authority of current market-based rate sellers to ensure that all such events are timely reported to the Commission by eliminating the option to delay reporting of such events until submission of a market-based rate seller's updated market power analysis. We propose that this reporting requirement be incorporated into the market-based rate tariff of each entity that is currently authorized to make sales at market-based rates, as well as that of all future applicants. The Commission seeks public comment on its proposal.

**DATES:** Comments are due November 15, 2004.

**ADDRESSES:** Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC, 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

#### **FOR FURTHER INFORMATION CONTACT:**

Brandon Johnson, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6143.

Michelle Barnaby, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8407.

**SUPPLEMENTARY INFORMATION:** Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suede G. Kelly.

#### **Notice of Proposed Rulemaking**

##### **Introduction**

1. In order to facilitate our oversight of public utilities with market-based rate authority, to ensure that the rates being charged continue to be just and reasonable and to give guidance to market participants to facilitate compliance with the Commission's reporting requirements, this Notice of Proposed Rulemaking proposes to standardize and clarify market-based rate sellers' reporting requirement for changes in status. In previous orders authorizing wholesale power sales in interstate commerce at market-based rates, the Commission has required market-based rate sellers to inform the

<sup>1</sup> 16 U.S.C. 824e (2000).

Commission of any change in status that would reflect a departure from the characteristics the Commission relied upon in authorizing sales at market-based rates. Some sellers were given the option of filing a new market analysis every three years in lieu of reporting changes in status on an ongoing basis. Others were given the option to report such changes every three years in conjunction with an updated market analysis. With respect to the events that qualify as a change in status, the Commission has stated that they include, but are not limited to: (1) Ownership of generation or transmission facilities or inputs to electric power production other than fuel supplies; or (2) affiliation with any entity not disclosed in the filing that owns generation or transmission facilities or inputs to electric power production or affiliation with any entity that has a franchised service area.

2. We propose to impose uniform standards on all market-based rate sellers by eliminating the option to delay reporting changes in status until submission of the triennial review, or to file a triennial review in lieu of reporting changes in status as they occur. To that end, acting pursuant to section 206 of the FPA, we propose to amend our regulations and to modify the market-based rate authority of current market-based rate sellers to include the requirement to timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. We propose that this reporting requirement be incorporated into the market-based rate tariff of each entity that is currently authorized to make sales at market-based rates, as well as that of all future applicants. We propose that notice of such changes in status be filed no later than 30 days after the change in status occurs. As discussed below, we seek public comment on our proposal.

## Background

3. The Commission has a statutory duty under the FPA to ensure that rates charged by public utilities authorized to make wholesale sales in interstate commerce at market-based rates are just and reasonable.<sup>2</sup> The Commission uses a four-part test to determine whether to grant a public utility market-based rate authority. That test examines whether the applicant or its affiliates possess the potential to exercise market power by considering generation market power, transmission market power, barriers to

entry, and the potential for affiliate abuse or reciprocal dealing. Sellers authorized to make sales at market-based rates are then required to file electric quarterly reports containing a summary of the contractual terms and conditions in every effective service agreement for market-based power sales and transaction information for their market-based rate sales during the most recent calendar quarter.<sup>3</sup>

4. The Commission has also required that market-based rate sellers report any changes in status that would reflect a departure from the characteristics the Commission relied upon in its existing grant of market-based rate authority. When the Commission first granted market-based rate authorizations, it required traditional utilities that satisfied the Commission's initial market power review to file an updated market power analysis every three years to allow the Commission to monitor competitive conditions and to determine whether the applicants still satisfied our market power concerns.<sup>4</sup> Power marketers, on the other hand, were required to promptly notify the Commission of changes in status.<sup>5</sup> Subsequently, the Commission has allowed market-based-rate sellers to choose between promptly reporting changes in status, filing a three-year update in lieu of reporting changes in status as they occurred,<sup>6</sup> or reporting such changes in conjunction with the updated market analysis.<sup>7</sup> The Commission reserved the right to require such an analysis at any time. The Commission proposes to continue to reserve this right.

5. To carry out its statutory duty under the FPA to ensure that market-based rates are just and reasonable, the Commission must rely on market-based rate sellers to provide accurate, up-to-date information regarding any relevant changes in status, such as ownership or control of jurisdictional facilities and affiliate relationships. In contrast to

when the Commission first began to authorize market-based rate sales, wholesale markets now have many more sellers of different types (*e.g.*, independent power producers, power marketers, affiliated generators). As markets have expanded and developed, both the number and types of sellers have increased and the complexity of wholesale markets has increased. Furthermore, market structure is rapidly evolving due to restructuring, corporate realignments and new types of contractual and subcontracting arrangements, in which utilities increasingly grant other firms control and/or influence over managing various aspects of their business such as power marketing. In light of these structural changes, the Commission has concluded that more timely reporting of changes in status is necessary.

6. We believe that, in today's electric industry, granting market-based rate sellers the option to delay reporting changes in status by up to three years does not provide the Commission with sufficient information to provide effective oversight of electricity markets.

7. Therefore, the Commission proposes to eliminate the option to delay reporting changes in status until the next triennial review, or to file a triennial review in lieu of promptly reporting changes in status, and to standardize the change in status reporting requirement. Accordingly, the proposed regulations would require that, as a condition of obtaining and retaining market-based rate authority, all sellers will be required to timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.

8. With respect to the types of events that should trigger the reporting obligation, the Commission proposes that, as an initial matter, the following events would qualify as changes in status: (1) Ownership or control of generation or transmission facilities or inputs to electric power production; or (2) affiliation with any entity not disclosed in the filing that owns or controls generation or transmission facilities or inputs to electric power production or affiliation with any entity that has a franchised service area.<sup>8</sup>

<sup>3</sup> Revised Public Utility Filing Requirements, Order No. 2001, 67 FR 31043 (May 8, 2002), III FERC Stats. & Regs. ¶ 31,127 (Apr. 25, 2002). The required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001.

<sup>4</sup> See, *e.g.*, Entergy Services, Inc., 58 FERC ¶ 61,234 (1992); Louisville Gas & Electric, 62 FERC ¶ 61,016 (1993).

<sup>5</sup> See, *e.g.*, Citizens Power & Light Corporation, 48 FERC ¶ 61,210 (1989); Enron Power Marketing, 65 FERC ¶ 61,305 (1993); InterCoast Power Marketing Co., 68 FERC ¶ 61,248 (1994).

<sup>6</sup> See, *e.g.*, Morgan Stanley Capital Group, Inc., 69 FERC ¶ 61,175 (1994).

<sup>7</sup> See, *e.g.*, AEP Power Marketing, Inc., 76 FERC ¶ 61,307 at 62,516 (1996); Montaup Electric Co., 85 FERC ¶ 61,313 at 62,232 (1998); Sithe/Independence Power Partners, 101 FERC ¶ 61,210 at 61,907 (2002).

<sup>8</sup> The Commission's regulations define "affiliated companies" as "companies or persons that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the [subject] company." 18 CFR 101 (2004). See also 18 CFR 161.2 (2004); Morgan Stanley Capital Group, *et al.*, 72 FERC ¶ 61,082 (1995).

<sup>2</sup> 16 U.S.C. 824d(a) (2000).

9. Although the market-based rate change in status provision has not specifically referenced "control" of assets, we have historically considered control of an asset to be a factor on which we rely in granting market-based rate authority. In order to eliminate any market uncertainty, we propose that the regulations specifically reference "control" as well as ownership as a factor relied upon by the Commission. In the Commission's early orders granting market-based rate authority, we acknowledged that sellers may exercise market power through contractual arrangements granting them control of generation or transmission facilities just as effectively as they could through ownership.<sup>9</sup> Similarly, the Commission's guidelines for the assessment of mergers and its generation market power analysis for market-based rate authority provide that, for the purposes of the market power analysis, the capacity associated with contracts that confer operational control of a given facility to an entity other than the owner must be assigned to the entity exercising control over that facility, rather than to the entity that is the legal owner of the facility.<sup>10</sup> In addition, with respect to notifications of changes in status, the Commission has found that an entity controls the facilities of another when it controls the decision-making authority over sales of electric energy, including discretion as to how, when and to whom it could sell power generated by these facilities.<sup>11</sup>

10. The Commission's general practice has been to require notifications of changes in status when the market-based rate applicant obtained ownership of new inputs to electric power production, other than

fuel supplies. However, since the Commission is interested in being informed of significant acquisition of ownership or control of any inputs to electric power production, we propose to require a reporting obligation to this effect. The Commission seeks comments on this proposal.

11. We recognize that the language in the proposed regulations may be susceptible to different interpretations among market-based rate sellers concerning the scope of their reporting requirement. Accordingly, we seek public comment as to whether and how this language should be modified to ensure that the types of changes in status that could impact the continued basis of a grant of market-based rate authority are identified and timely reported to the Commission.

12. For example, should there be a threshold level of increases in generation (such as generation addition through acquisition, self-build, long-term power purchases, repowering) that would trigger the reporting requirement? If so, what amount of increase in generation should trigger the reporting requirement?

13. Should the applicant have a reporting requirement if portions of the applicant's transmission system are taken out of service for a significant period of time (thus potentially affecting the scope of the relevant geographic market)? If so, what criteria should trigger this reporting requirement?

14. Beyond ownership or control of generation or transmission facilities or inputs to electric power production and affiliation with any entity not disclosed in the filing that owns or controls generation or transmission facilities or inputs to electric power production or affiliation with any entity that has a franchised service area, we seek comment as to whether there are other arrangements, contractual or otherwise, that should be promptly reported to the Commission. For example:

- What types of arrangements, contractual or otherwise, do market-based rate sellers enter into that could cause a need for the Commission to revisit the continuing basis of the grant of market-based rate authority for such sellers?
- What threshold of materiality, if any, of such arrangements should be met before such arrangements need be reported to the Commission?
- Should marketing alliances, brokering arrangements, tolling agreements or other sales-oriented arrangements be reported?

15. With respect to the form and content of such reports, we propose that the market-based rate seller be required

to submit a transmittal letter including a description of the change in status and a narrative explaining whether (and, if so, how) this change in status reflects a departure from the characteristics relied upon by the Commission in originally granting the seller market-based rate authority, in particular whether the change in status affects the results of any of the prongs of the four-part test that the Commission uses to determine whether a public utility qualifies for market-based rate authority (*i.e.* generation market power, transmission market power, barriers to entry, affiliate abuse/reciprocal dealing). If the market-based rate seller believes that a change in status does not affect the continuing basis of the Commission's grant of market-based rate authority, it should clearly state the reasons on which it bases this conclusion.

16. In addition to including this reporting requirement in the Commission's regulations, we propose that this reporting requirement be incorporated into the market-based rate tariff of each entity that is currently authorized to make sales at market-based rates, as well as that of all future applicants. Market-based rate sellers would be required to submit a conforming provision to their market-based rate tariffs at the time that they file any amendment to their tariffs or (if earlier) when they apply for continued authorization to sell at market-based rates (*e.g.*, in their three-year updated market power analysis). However, the Commission proposes that the obligation to report be effective at the time that the Final Rule becomes effective.

17. With respect to the procedures for reporting notifications of changes in status, the proposed rule requires that such notifications be filed no later than 30 days after the occurrence of the triggering event. We seek comment as to whether this proposed time period is appropriate.

#### Information Collection Statement

18. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.<sup>12</sup> Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility and clarity of the information to be collected, and any suggested methods for minimizing

<sup>9</sup> See, *e.g.*, Citizens Power & Light Corp., 48 FERC ¶ 61,210 (1989). In this order, we stated that: "[u]sually, the source of market power is dominant or exclusive ownership of the facilities. However, market power also may be gained without ownership. Contracts can confer the same rights of control. Entities with contractual control over transmission facilities can withhold supply and extract monopoly prices just as effectively as those who control facilities through ownership."

<sup>10</sup> See AEP Power Marketing, Inc., *et al.*, 107 FERC ¶ 61,018 at P 95 (2004), order on reh'g, 108 FERC ¶ 61,026 at P 65 (2004); Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement, Order No. 592, 61 FR 68595 (1996), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,044 (1996), reconsideration denied, Order No. 592-A, 62 FR 33341 (1997), 79 FERC ¶ 61,321 (1997) (Merger Policy Statement); see also Revised Filing Requirements Under Part 33 of the Commission's Regulations, Order No. 642, 65 FR 70983 (2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,111 at note 39 (2000), order on reh'g, Order No. 642-A, 66 FR 16121 (2001), 94 FERC ¶ 61,289 (2001).

<sup>11</sup> El Paso Electric Power Co., *et al.*, 108 FERC ¶ 61,071 at P 14 (2004), reh'g pending.

<sup>12</sup> 5 CFR 1320.11 (2004).



respondents' burden, including the use of automated information techniques.

19. *Estimated Annual Burden:* To satisfy the reporting requirement, the Commission expects respondents to submit a transmittal letter including a description of the change in status and

a narrative explaining whether (and, if so, how) this change in status reflects a departure from the characteristics relied upon by the Commission in originally granting the seller market-based rate authority. The Commission estimates

that, on average, it will take respondents six hours per response and that approximately 25 percent of current market-based rate sellers would experience a change in status in any given year.

Data collection	Number of respondents	Number of hours	Number of responses	Total annual hours
FERC-516 .....	1,238	6	.20	1,486

*Title:* Electric Rate Schedules and Filings, Reporting Requirement for Changes in Status For Public Utilities With Market-Based Rate Authority (FERC-516).

*Action:* Proposed Collection.

*OMB Control No.:* 1902-0096.

*Respondents:* Businesses or other for profit.

*Frequency of Responses:* On occasion.

*Necessity of Information:* The proposed regulations will revise market-based rate sellers' reporting obligation and are intended to ensure that rates and terms of service offered by market-based rate sellers remain just and reasonable.

*Internal review:* The Commission has reviewed the proposed amendment to its regulations to establish a reporting obligation for changes in status and has determined that these regulations are necessary to ensure just and reasonable rates. These regulations, moreover, conform to the Commission's plan for efficient information collection, communication, and management within the electric utility industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information/data retention requirements.

20. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, Attention: Michael Miller, Office of the Executive Director, phone: (202) 502-8415, fax: (202) 273-0873, e-mail: [michael.miller@ferc.gov](mailto:michael.miller@ferc.gov). Comments on the proposed requirements of the subject rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395-4650.

#### Environmental Analysis

21. The Commission is required to prepare an Environmental Assessment

or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.<sup>13</sup> The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.<sup>14</sup> This proposed rule, if finalized, is procedural in nature and therefore falls under this exception; consequently, no environmental consideration would be necessary.

#### Regulatory Flexibility Act Certification

22. The Regulatory Flexibility Act of 1980 (RFA)<sup>15</sup> generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.<sup>16</sup> The Commission is not required to make such analyses if a rule would not have such an effect.

23. The Commission does not believe that the proposed amendment to our regulations would have such an impact on small entities. Based on past experience, most of the sellers having changes in status that would likely trigger a filing under the proposed regulations would be entities that do not meet the RFA's definition of a small

entity. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### Comment Procedures

24. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due November 15, 2004. Comments must refer to Docket No. RM04-14-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

25. Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC 20426.

26. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

#### Document Availability

27. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First

<sup>13</sup> Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (Dec. 10, 1987).

<sup>14</sup> 18 CFR 380.4(a)(2)(ii) (2004).

<sup>15</sup> 5 U.S.C. 601-612 (2000).

<sup>16</sup> The RFA definition of "small entity" refers to the definition provided in the Small Business Act, which defines a "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. 15 U.S.C. 632 (2000). The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal years did not exceed 4 million MWh. 13 CFR 121.201 (Section 22, Utilities, North American Industry Classification System, NAICS) (2004).



Street, NE., Room 2A, Washington, DC 20426.

28. From FERC's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

29. User assistance is available for eLibrary and the FERC's website during normal business hours. For assistance, please contact FERC Online Support at 1-866-208-3676 (toll free) or 202-502-6652 (e-mail at [FERCOnlineSupport@FERC.gov](mailto:FERCOnlineSupport@FERC.gov)), or the Public Reference Room at 202-502-8371, TTY 202-502-8659 (e-mail at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov)).

#### List of Subjects in 18 CFR Part 35

Electric power, Reporting and recordkeeping requirements.

By direction of the Commission.

**Magalie R. Salas,**  
Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 35, Chapter I, Title 18 of the Code of Federal Regulations, as set forth below:

#### PART 35—FILING OF RATE SCHEDULES AND TARIFFS

1. The authority citation for part 35 continues to read as follows:

**Authority:** 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. In § 35.27, paragraph (c) is added to read as follows:

#### § 35.27 Power sales at market-based rates.

\* \* \* \* \*

(c) *Reporting requirement.* Any public utility with the authority to engage in sales for resale of electric energy in interstate commerce at market-based rates shall be subject to the following:

(1) As a condition of obtaining and retaining market-based rate authority, a public utility with market-based rate authority must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. A change in status includes, but is not limited to each of the following:

(i) Ownership or control of generation or transmission facilities or inputs to electric power production, or

(ii) Affiliation with any entity not disclosed in the application for market-

based rate authority that owns or controls generation or transmission facilities or inputs to electric power production or affiliation with any entity that has a franchised service area.

(2) Any change in status subject to paragraph (c)(1) of this section must be filed no later than 30 days after the change in status occurs.

[FR Doc. 04–23136 Filed 10–14–04; 8:45 am]

BILLING CODE 6717–01–P

#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Part 64

[CC Docket No. 98–170; CG Docket No. 04–244; FCC 04–162]

#### Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996; Truth-in-Billing and Billing Format

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rules.

**SUMMARY:** In this document, the Commission seeks comment on how best to protect consumers and foster legitimate businesses that offer audiotext information services, including those that use 900 numbers and toll-free numbers.

**DATES:** Comments are due on or before November 15, 2004 and reply comments are due on or before November 29, 2004. Written comments on the Paperwork Reduction Act (PRA) proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before December 14, 2004.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act (PRA) information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to [Judith-B.Herman@fcc.gov](mailto:Judith-B.Herman@fcc.gov), and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, via the Internet to [Kristy.L.LaLonde@omb.eop.gov](mailto:Kristy.L.LaLonde@omb.eop.gov), or via fax at 202–395–5167.

**FOR FURTHER INFORMATION CONTACT:** Ruth Yodaiken, of the Consumer & Government Affairs Bureau at (202)

418–2512 (voice), or e-mail [ruth.yodaiken@fcc.gov](mailto:ruth.yodaiken@fcc.gov). For additional information concerning the PRA information collection requirements contained in this document, contact Judith B. Herman at (202) 418–0214, or via the Internet at [Judith-B.Herman@fcc.gov](mailto:Judith-B.Herman@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), adopted July 1, 2004, and released July 16, 2004. This Notice of Proposed Rulemaking (NPRM), *Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services, and Toll-free Number Usage; Truth-in-Billing and Billing Format*, CC Docket No. 98–170, CG Docket No. 04–244; FCC 04–162, contains proposed information collection requirements. It will be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA). OMB, the general public, and other federal agencies are invited to comment on the proposed information collection(s) contained in these proceedings. On July 16, 2004, the Commission also released a Memorandum Opinion and Order (MO&O), *Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996; Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, Florida Public Service Commission Petition to Initiate Rulemaking to Adopt Additional Safeguards; Application for Review of Advisory Ruling Regarding Directly Dialed Calls to International Information Services*, CC Docket Nos. 96–146 and 98–170, RM–8783, ENF–95–20; FCC 04–162. The full text of this document is available on the Commission's Web site Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov), or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). This NPRM can also be downloaded in Word and Portable Document Format (PDF) at <http://www.fcc.gov/cgb/policy/paypercall.html>.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed.

If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Parties who choose to file comments on billing issues, please reference both CG Docket No. 04-244 and CC Docket No. 98-170. Parties who choose to file comments on any other aspect of Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services, and Toll-free Number Usage, should reference only CG Docket No. 04-244. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW-B204, Washington, DC 20554. Parties who choose to file paper comments also should send four paper copies of their filings to Kelli Farmer,

Federal Communications Commission, Room 4-C734, 445 12th Street, SW., Washington, DC 20554.

One copy of each filing must be sent to the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), by mail at Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554; by e-mail at [FCC@bcpiweb.com](mailto:FCC@bcpiweb.com); by facsimile at (202) 488-5563; or by telephone at (202) 488-5300.

#### **Initial Paperwork Reduction Act of 1995 Analysis**

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections requirements contained in this document, as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104-13. Public and agency comments are due December 14, 2004. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

*OMB Control Number:* 3060-0748.

*Title:* Section 64.1504, Disclosure Requirements For Information Services Provided Through Toll-Free Numbers.

*Form Number:* N/A.

*Type of Review:* Revision of currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 6,500.

*Estimated Time per Response:* 2-5 hours.

*Frequency of Responses:*

Occasionally; third party disclosure.

*Total Annual Burden:* 13,000-32,500 hours approximately.

*Total Annual Cost:* None.

*Privacy Act Impact Assessment:* No impact(s).

*Needs and Uses:* The item proposes to reexamine FCC rules in this area to

ensure that consumer protections are adequate and are not being circumvented. The item seeks comment on a number of issues relating consumer protections and the state of the existing 900-number regime, toll-free numbers, and audiotext information services accessed through dialing methods other than 900 numbers. The Commission seeks comment on whether to revise certain recordkeeping requirements to allow recordings of customer's oral verification as evidence that charges should not be forgiven. We ask if we need to modify our existing rules to comport with the E-Sign Act which should ease any existing burdens. The item proposes to clarify that all audiotext information services, must either have presubscription agreements or use charge cards for billing. We note that parties are already required to garner authorization for such calls. These measures are aimed at preventing circumvention of our rules. We believe that any additional recordkeeping burden as a result of these rules would be minimal for most businesses. We estimate that this requirement will account for an additional 7 hours of recordkeeping burden per company, or an additional 10,500 hours.

*OMB Control Number:* 3060-0752

*Title:* Section 64.1510, Billing

Disclosure Requirements for Pay-Per-Call and Other Information Services.

*Form No.:* N/A

*Type of Review:* Revision of currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 1,946.

*Estimated Time per Response:* 10 hours.

*Frequency of Response:* Annual reporting requirement; Third party disclosure.

*Total Annual Burden:* 19,460 hours.

*Total Annual Costs:* None.

*Privacy Act Impact Assessments:* No impact(s).

*Needs and Uses:* The item proposes to reexamine FCC rules in this area to ensure that consumer disclosures are adequate. The item also seeks comment on a proposal to change the display of toll-free numbers on telephone bills to clearly indicate the parties charging for information services obtained through toll-free numbers.

#### **Synopsis**

##### *1. Toll-free Numbers*

The Commission's rules, which implement the statute virtually verbatim, have detailed criteria that must be met in the limited circumstances under which calls

involving toll-free numbers can be used for purchases of goods and services, including audiotext information services. Our rules and the statute already require common carriers, including small carriers, to use contracts or tariffs to prohibit their customers from using 800 numbers in ways that are thought to leave consumers without the benefit of protections against fraud. For example, carriers must prohibit the use of 800 numbers, or any other numbers advertised or widely understood to be toll-free, in a way that the calling party is charged for information, with limited exception. There are exceptions for charges where there are presubscription agreements or use of certain credit and charge cards. The only way to have information charges that appear on a consumer's phone bill is through a presubscription agreement which in most cases must be in writing, include specific disclosures, and use personal identification numbers for access to the service. However, despite these protections, the Commission continues to receive complaints in this area. In the first six months of 2004, the Commission received close to 5,000 complaints that referenced toll-free numbers. We are interested in finding out why, with these protections, there are still complaints in this area. For example, are there many problems for consumers when charge cards are used for payment? (See 47 U.S.C. 228(c)(9); 47 CFR 64.1504(c)(2).) Do more problems occur, for example, when the written agreement does not require the use of a personal identification number? See 47 U.S.C. 228(c)(8)(C) and (D); 47 CFR 64.1504(f)(1). We seek comment on possible solutions.

#### a. Protection for Line Subscribers as Well as Callers

Section 228 and our rules governing toll-free calls explicitly protect "the calling party" from being charged for information conveyed during the call unless meeting the criteria discussed above. (See 47 U.S.C. 228(c)(7)(C) and (c)(8)–(9); See also 47 CFR 64.1504.) In the 1996 Order & NPRM, the Commission discussed the possibility of extending the toll-free number protections that apply to the "calling party," so that they also apply to the "subscriber to the originating line." (1996 Order & NPRM, 11 FCC Rcd at 14753, para. 44. The calling party could be someone other than the subscriber, for example, a visitor to the subscriber's home.) We believe this proposal is still valid today. For directly-dialed toll calls placed without a calling card, it is the subscriber—not necessarily the calling

party—who is assessed charges for calls placed over that line. It would not seem appropriate for an individual calling a toll-free number to be protected from incurring charges without extending the same protection to the individual or entity billed for the calls. We seek comment on whether we should amend § 64.1504 of our rules explicitly to protect the subscriber as well from the practices that Congress has chosen to prohibit. Would such an amendment help to protect small businesses from calls made by employees?

#### b. Use of Number Identification for Billing Through Toll-Free Numbers

Section 228(c)(7)(A) of the 1996 Act prohibits "the calling party being assessed, by virtue of completing the call [to a toll-free number], a charge for the call." (47 U.S.C. 228(c)(7).) In the 1996 Order & NPRM, the Commission adopted a rule that mirrors that portion of the § 228 and also prohibits such conduct. (47 CFR 64.1504(c).) In order to assess charges for directly dialed toll calls, common carriers identify the telephone line used to originate a toll call and assess charges to the subscriber to that line. The Commission generally has held telephone subscribers responsible for toll charges resulting from unauthorized use of their telephone lines. However, in the past, the Commission has received complaints that parties were using such information to bill callers for services from calls made to toll-free numbers. In the 1996 Order & NPRM, the Commission also tentatively concluded that a carrier's billing of calls dialed to 800 or other toll-free numbers on the basis of one such technology, Automatic Number Identification (ANI), amounted to assessing charges on the basis of completion of the call, and therefore violated section 228(c)(7)(A) of the Act, unless the call involved use of telecommunications devices for the deaf. (The term "ANI" refers to the delivery of the calling party's billing number by a local exchange carrier to any interconnecting carrier for billing or routing purposes, and to the subsequent delivery to end users. See 47 CFR 64.1600(b). See also 1996 Order & NPRM, 11 FCC Rcd at 14754, para. 45. Telecommunications devices for the deaf utilize ANI to identify the telephone subscriber to be billed. The Commission also made a tentative conclusion that ANI-based billing also violates 201(b) in the 1996 Order & NPRM. See 1996 Order & NPRM, 11 FCC Rcd at 14754, para. 45; See also 47 U.S.C. 228(c)(7), 47 CFR 64.1504(c), and 47 U.S.C. 201(b). Section 201(b) requires that all charges and practices for and in

connection with any common carrier communications services be just and reasonable.) At that time, commenters generally agreed that a carrier's billing of toll-free calls on the basis of ANI violated the statute. In the interests of collecting a more complete record to include newer technology, we now seek comment on whether we should specifically prohibit billing calls dialed to 800 or other toll-free numbers on the basis of not just ANI, but equivalent information, automatically provided calling number identification. (See, e.g., 47 CFR 64.1600(d) (charge number—conveying similar information in a System 7 environment).)

#### 2. Audiotext Information Services, Including Pay-Per-Call Services

##### a. Consumer Protection in General

The Commission's rules governing pay-per-call services are meant to be a framework of consumer protections for these audiotext information services. The rules require, first, that consumers are given appropriate information, such as pricing, so they can make informed decisions about services. (The Commission rules require carriers themselves to disclose information, and/or to require disclosure through contract or tariff. See 47 CFR 64.1502, 1504, and 1509. The rules require compliance with Titles II and III of TDDRA, and the FTC's implementing rules. See 16 CFR 308.5 (FTC's rules relating to pay-per-call).) Second, consumers are meant to be able to choose to block unwanted access to the pay-per-call services, for free or at a reasonable cost. (47 U.S.C. 228(c)(5). See also 47 CFR 64.1508.) And third, consumers are supposed to be protected from losing local or long-distance services for nonpayment of charges for pay-per-call services. (47 U.S.C. 228(c)(4). See also 47 CFR 64.1507.) However, we are concerned that as audiotext information services have migrated increasingly outside the pay-per-call setting, consumers, including small business consumers, have lost some of these basic protections. Consumer disclosure requirements for audiotext information services only apply to services over 900 numbers, and, as above, some calls over toll-free numbers. Similarly, alternative dialing routes circumvent subscriber blocking, allowing even children to obtain access to audiotext information services. Additionally, consumers' calls are sometimes rerouted without their authorization through specialized long-distance carriers designed to accumulate high rates for what are advertised as free information services. Under those conditions, consumers can end up being

disconnected for what are essentially services that arguably should be covered by pay-per-call protections. In this rulemaking we explore several of these areas, and seek comment on the best way to address concerns of consumers, without hindering legitimate businesses, including small and new businesses. One such example of an item outside the standard pay-per-call application is a phenomena known informally as "modem hijacking." The Commission has received complaints about local calls which are redirected without the caller's authorization through software programs, which disconnects Internet users' calls and dial international numbers often through carriers other than those chosen by subscribers for their long-distance calls. Sometimes there is no way to disconnect the call other than to unplug the telephone line. Furthermore, the placement of a call to an international telephone number in situations like this does not necessarily mean it connects through the country to which it is assigned.

Although the FTC has addressed some cases in this area, we seek comment on whether additional actions are needed from the FCC. (See, e.g., *FTC v. BTV Industries, Rik Covell, Adam Lewis, National Communications Team, Inc., LO/AD Communications Corp., and Nicholas Loader*, CV-S-02-0437-LHR-PAL, Complaint, and Temporary Restraining Order (D Nev. 2002) (alleging defendant sent e-mail messages claiming that consumers had won a prize, and when consumers responded, routing the calls to an adult Internet site via a 900-number modem connection generating high per-minute rates). In that case, the FTC alleged that the defendant's practices were deceptive and misleading by, among other things, leading consumers to believe that the connection to the web site was toll-free. See, also, *FTC v. Verity Int'l, Ltd.*, 194 F.Supp.2d 270, 276 (S.D.N.Y. 2002) (FCC supported the FTC action in a friend of the court brief.) We invite commenters to offer specific proposals consistent with our section 228 authority. We have on a case-by-case basis looked at some parameters of using 201(b) to review certain relationships between carriers and information providers in chat-line cases. (See, e.g., *Beehive v. AT&T*, 17 FCC Rcd 11641 (2002); *AT&T Corp. v. Jefferson Telephone Co.*, Memorandum Opinion and Order, 16 FCC Rcd 16130 (2001) (*Jefferson*)). We seek comment on the broader policy of what factors and concerns we should take into account in making decisions regarding the broad practices and conduct in this general

area, including whether we should consider revoking carriers' section 214 certification for such conduct. (See 47 U.S.C. 214.) We seek comment on whether consumers should be given protections to allow call disconnection.

#### b. The 900 Number Regime

Section 228 also requires the Commission to identify procedures that common carriers and pay-per-call providers, including small carriers and providers, can use to protect against nonpayment of legitimate charges. (47 U.S.C. 228(b)(4).) Pay-per-call providers have recently commented that audiotext information service providers have moved outside the 900 number regime because it has become a difficult environment in which to operate. In addition, AT&T Corp. noted that pay-per-call providers may avoid federal regulation by using revenue sharing agreements and instant credit to mask services that otherwise would be regulated as pay-per-call.

The use of 900 numbers has dropped dramatically in the past five years. For example, the number of assigned 900 numbers, which peaked in 1999 with 447 distinct 900 NXX codes, had dropped to 206 by the end of 2002. Many of those numbers are not actually used by end users. Many carriers decline to provide transport or bill for 900 numbers. Further, some pay-per-call providers claimed that carriers forgive disputed pay-per-call charges repeatedly for the same subscribers without instituting 900 number blocking in those cases. One participant expressed concern that the health of the 900 number rules, if applicable, is crucial to market and consumer confidence. Clearly the Commission does not want to direct pay-per-call providers to a system that does not function. We seek comment on what steps can be taken to ensure the 900 number regime functions properly.

One commenter noted that a practice used in the United Kingdom requiring pay-per-call providers to record the customer's voice greatly reduced disputes over charges. We seek comment on whether it would be appropriate to allow carriers to accept recordings of customer's oral verification that they understand and agree to the charges as evidence that charges should not be forgiven. We seek comment from pay-per-call providers on whether such items would be necessary.

#### c. Presubscription or Comparable Arrangement

As noted previously, the Commission requires services meeting the pay-per-call definition to be accessed only

through 900 numbers, and the only ways that audiotext information services fall outside the pay-per-call definition, and therefore the requirement that they be offered only over 900 numbers, are (1) by being directory services as described in the statute, or (2) to have charges assessed only after there is a "presubscription or comparable agreement." (47 U.S.C. 228(i) and (b)(5).) In the 1996 *Order & NPRM*, the Commission sought comment on refining the definition of presubscription and comparable agreement so that it is clear what criteria must be met for all audiotext information services other than directory services to be offered over numbers outside of the 900 prefixes, including those services using toll-free numbers. Rather than having the Commission designate all prefixes as pay-per-call prefixes to ensure protection for consumers, the Commission proposed to make clear that to operate outside of 900 numbers, all audiotext information services (other than directory services) must either have presubscription agreements executed in writing or, alternatively, require that payments be made through direct remittance, prepaid account, or debit, credit, charge or calling card. For example, this proposal would apply such protections to 500 numbers, 700 numbers, plain old telephone service and international numbers when used to provide audiotext information services.

We again seek comment on the usefulness and practicality of such a proposal. In particular, we ask whether this proposal would be adequate to balance the need to protect consumers, but allow businesses to develop. In particular, how would this proposal effect small businesses? Are small businesses already keeping such records? In addition, we seek comment on whether there is still a need for such changes in this area given developments in electronic commerce and related laws, and the now-common use of third-party verifications in telephone transactions.

We also seek comment on whether we need to modify our existing and proposed rules given our obligations under the Electronic Signatures in Global and National Commerce Act (E-Sign Act). (Electronic Signatures in Global and National Commerce Act, S. 761, 106th Cong., 2d Sess. (signed into law June 30, 2000).) Under the E-Sign Act, a contract or business transaction cannot be denied validity or enforceability solely because the contract or transaction is not in writing, so long as the contract or transaction is a properly authenticated electronic

record or has been affirmed by an electronic signature. The E-Sign Act provides a specific framework for the use of electronic records and signatures and places limits on the interpretation authority of federal and state regulatory agencies with regard to this framework. We seek comment on how we might best adjust our current and proposed requirements for presubscription or comparable agreements to best comply with the E-Sign Act.

### 3. Billing

Section 228 and our rules already mandate certain billing practices for pay-per-call services and 800 numbers billed via the telephone bill. (See 47 U.S.C. 228(c)(8)(B) and (d)(4); See also 47 CFR 64.1504, 1509 and 1510.) Telephone billing of subscribers for any pay-per-call services must already display any such charges “in a part of the subscriber’s bill that is identified as not being related to local and long distance telephone charges,” and, at a minimum, describe the type of service, the amount of the charge, and the date, time, and duration of the call. There must also be a clearly-identified toll-free number established for customers to call with any questions. 47 U.S.C. 228(d)(4); See also 47 CFR 64.1509(b) and 47 CFR 64.1510(2). For toll-free numbers used to bill items on a telephone bill, the number called must be listed clearly with a disclaimer in prominent type that neither local nor long distance service could be disconnected for “failure to pay disputed charges for information services.” In addition, the Commission has developed rules and guidelines in the *Truth-in-Billing* proceeding to ensure that all telephone billing is readily discernable to consumers. (See 47 CFR 64.2400–2401; see also *Truth-in-Billing and Billing Format*, CC Docket No. 98–170, First Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 7492 (1999) (*Truth-in-Billing Order*)). In general, charges must be accompanied by “a brief, clear, non-misleading, plain language description of the service or services rendered” that allows consumers to “accurately assess that the services for which they are billed correspond to those that they requested and received,” and that the costs “conform to their understanding of the prices charged.” (47 CFR 64.2401(b). See also *Truth-in-Billing Order*.) The *Truth-in-Billing Order* requires that telephone bills highlight changes in or additions of new providers, but non-recurring pay-per-call services are specifically exempt from that requirement. (*Truth-in-Billing and Billing Format*, Order on Reconsideration, 15 FCC Rcd 6023, at

6025, para. 5 (2000) (*Truth-in-Billing Reconsideration*)).

We seek comment on whether our existing rules governing billing specifically for pay-per-call services and those for charges billed through toll-free numbers, in combination with our *Truth-in-Billing* rules and guidelines, are sufficient to address any current billing concerns. (We note that the Commission’s billing rules specifically do not preempt states from adopting or enforcing their own consistent rules. 47 CFR 64.2400(b). For example, Florida has adopted a rule specifically aimed at pay-per-call problems. See *Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act*, Florida Public Service Commission Notice of Withdrawal of Petition to Initiate Rulemaking, filed January 26, 2004.) We seek comment specifically on whether we should adopt a rule stating that charges for presubscribed audiotext information services accessed through toll-free numbers must be displayed separately from local and long-distance telephone service. How would such a rule affect small carriers?

### 4. Revenue-Sharing Arrangements

The definition of pay-per-call services found in § 228 rests on the requirement that such calls are only those calls to audiotext information services for which the caller pays a per-call or per-time-interval charge greater than or in addition to the “charge for transmission of the call.” Some businesses have used revenue-sharing arrangements to offer for-profit audiotext information services without pay-per-call regulation. The classic scenario is when an audiotext information service provider does not charge callers for the service outright, but instead receives a commission from a common carrier for the telephone traffic, which might be charged at a high rate.

In the 1996 *Order & NPRM*, the Commission sought to address these types of evasions of consumer protections. The Commission tentatively concluded that certain revenue-sharing arrangements were in reality charging for more than just transmission of the call, even if the caller was not billed separately for the audiotext information service. (1996 *Order & NPRM* at 14756 para. 48. The Commission based its tentative conclusion on its authority under § 154(i), and addressed circumvention of section 228 through the language related to the cost of transmission.) Specifically, the Commission tentatively concluded that any form of remuneration between a carrier and audiotext information services provider constituted *per se*

evidence that the charge levied actually exceeds the charge for the transmission.

Accordingly, under this tentative conclusion, interstate services provided through such an arrangement would fit within the pay-per-call definition and, thus, be required to be offered exclusively through 900 numbers. The 1996 *Order & NPRM* also notes a staff letter which discussed several hypothetical scenarios in which revenue-sharing arrangements were used essentially to mask audiotext information services from pay-per-call regulation. In the Marlowe Letter, the staff’s opinion was that such scenarios would violate both section 228 and section 201(b). (Letter from John Muleta, Chief of the Common Carrier Enforcement Bureau at that time, to Ronald Marlowe, 10 FCC Rcd 10945, DA 95–1905 (September 1, 1995) (*Marlowe Letter*). See 47 U.S.C. 201(b). Section 201(b) requires all charges and practices for and in connection with any common carrier communications services be just and reasonable.)

In 2001, the Commission determined that the existence of a revenue-sharing arrangement between a common carrier and a chat-line service alone did not demonstrate that a carrier’s conduct was unjust and unreasonable under section 201(b). (*Jefferson*, 16 FCC Rcd at 16136, para. 13. (2001) (overruling Marlowe to the extent that it was not consistent with the conclusions in the Order). See also *Beehive*; *Jefferson*; *AT&T Corp. v. Frontier Communications of Mt. Pulaski, Inc.*, 17 FCC Rcd 4041 (2002) (follows *Jefferson*), *AT&T v. Atlas Telephone Co. and Total Telecommunications Services, Inc.*, 16 FCC Rcd 5726 (2001), *aff’d in part and remanded sub nom*, *AT&T Corp. v. F.C.C.*, 317 F.3d 227 (DC Cir. 2003); *dismissed*, *Atlas Telephone Co. v. AT&T Corp.*, File No. E–97–03, Order, 18 FCC Rcd 11533.) Although the Commission noted in *Jefferson* that it was not addressing the application of section 228 to such a situation, the decision calls into question our basis for our prior tentative conclusion in the 1996 *Order & NPRM*. (*Jefferson*, 16 FCC Rcd at 16133 n.18.) Thus, we no longer reach that tentative conclusion here. Instead, we invite commenters, including small carriers and small audiotext information service providers, to address the issue of revenue-sharing arrangements in light of the *Jefferson* decision. Parties should discuss whether it is possible or appropriate to find that any revenue-sharing arrangements do not comply with section 228 even if such arrangements would not violate 201(b).

## 5. New and Evolving Services

### a. Definition of Exempted Directory Services

Section 228 exempts "directory services" from the definition of pay-per-call. In the *TDDRA R&O* implementing section 228, commenters asked the Commission to interpret the definition of "directory services" to include only "basic" directory services. The Commission noted that a common carrier also operating as a provider of audiotext information services "cannot shield its information services from pay-per-call regulation by offering them through a directory services number." In 2003, some commenters stated that ambiguities in this area persist. They asked that the Commission "clarify" that enhanced directory services were exempt from pay-per-call.

Examples of such services mentioned in the comments to CC Docket No. 96-146 include such things as a service that allows subscribers to access directory listings by category, and then obtain additional information about the listing, upload personal contacts into a private database, and use a live operator to access their own personal data. Another service allows wireless subscribers to store personal address books on a network server and have voice-activated access to data with news, receive wake-up calls and get travel information "at no additional charge." Another proposed service would add more content such as information about the weather, and have partnerships with businesses to allow for such connections as transferring customers to places for ticket purchases.

In other proceedings, the Commission has already been presented with questions about the offering of directory services that are more than "traditional" operator provision of local telephone numbering. In the N11 numbering proceeding, some commenters had argued that Local Exchange Carrier (LEC) use of the 411 number should be restricted to the provision of "traditional" directory services, meaning operator provision of local telephone numbers. (*The Use of N11 Code and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105, First Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5572, 5600, para. 48 (*N11 First Report and Order*)). The Commission declined to do so at that time, and instead concluded that a LEC could offer enhanced services using a 411 code, or any other N11 code, only if that LEC offered access to the code on a reasonable, nondiscriminatory basis to competing enhanced services providers.

In January 2002, the Commission released a Notice of Proposed Rulemaking in a related proceeding specifically asking whether allowing enhanced directory assistance to be available through presubscribed 411 would be consistent with Commission rules regarding pay-per-call and related services. (*Provision of Directory Listing Information Under the Communications Act of 1934, as Amended*, CC Docket No. 99-273; *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105; *Administration of the North American Numbering Plan*, CC Docket No. 92-237, Notice of Proposed Rulemaking, 17 FCC Rcd 1164, 1183, para. 37 (FCC 01-384) (*N11 NPRM*)). We seek comment on the narrow question of how to further define "directory services" that are specifically exempt from the consumer protections of pay-per-call, regardless of whether any presubscription or comparable agreement exists.

### b. Data Services

At least two commenters in 2003, claimed that data services are exempt from regulation under section 228 and another has suggested that uncertainty in this area might fluster development of nascent industries. However, section 228 has several provisions that allude to data services being pay-per-call services. First, section 228(f)(3) required the Commission to review the "extension of regulation under [section 228] with respect to persons that provide, for a per-call charge, data services that are not pay-per-call services." In the *First TDDRA Order*, the Commission noted that the statutory definition of pay-per-call includes "data information services," but it did not find a need to warrant extension of regulation of section 228 outside pay-per-call data services. In addition, section 228(c)(8) provides an exception to the criteria for written agreements for "any purchase of goods or of services that are not information services." We seek comment on whether further clarification is needed on this topic of what data services fit within the pay-per-call definition. We seek specific comments on items that might be of significant concern for consumers and for developing businesses, including small businesses.

### Initial Regulatory Flexibility Analysis (IRFA)

Initial Regulatory Flexibility Analysis (IRFA), as required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the

possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking and Memorandum Opinion and Order (NPRM). (See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law Number. 104-121, Title II, 110 Statute 857 (1996).) Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on the NPRM provided above in the Comment Filing Procedures section paragraph 45. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

### Need for, and Objectives of, the Proposed Rules

The Commission has rules to afford consumers protection from deceptive practices associated with the provision of audiotext information services, and the use of toll-free numbers. In 1996, the Commission issued a Notice of Proposed Rulemaking (NPRM) proposing rules which were intended to address potential circumvention of the regulations. Later, in March of 2003, the Commission issued a Public Notice seeking to refresh the record in the proceeding. In this NPRM, the Commission initiates a new proceeding to review the effectiveness of our rules governing pay-per-call services, related audiotext information services, and toll-free numbers. The Commission seeks comment on the state of the 900-number regime regulating pay-per-call services, the effectiveness of consumer protections relating to toll-free numbers, and to those audiotext information services accessed through dialing methods other than 900 numbers. We are interested in learning the extent to which consumer protections have been circumvented, and what steps we might take to protect consumers, including small business consumers, from such practices. In addition, we seek comment on changes in technology that warrant re-examination and clarification of these rules.

### Legal Basis

The legal basis for any action that may be taken pursuant to this NPRM is contained in sections 1-4, 201(b), 228, and 303(r) of the Communications Act

of 1934, as amended, 47 U.S.C. 151–154, 201(b), 228, and 303(r).

### **Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply**

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

Small entities potentially affected by the policies and rules proposed herein include organizations, governmental jurisdictions, providers of audiotext information services, and providers of telecommunications and other services, including both wired and wireless services, such as operator service providers, prepaid calling card providers, and other toll carriers.

*Small Businesses.* Nationwide, there are approximately 22.4 million small businesses, according to SBA data.

*Small Organizations.* A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, there are approximately 1.6 million small organizations. *Small Governmental Jurisdictions.* The term “small governmental jurisdiction” is defined as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” As of 1997, there were approximately 87,453 government jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 have populations of fewer than 50,000 and 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be up to 85,955.

*Providers of audiotext information services.* While the Commission’s rules directly apply to common carriers that transmit and bill subscribers for information services, other companies actually providing the information services might be indirectly affected. For example, audiotext information

service providers that have used toll-free numbers to provide information services will be affected by the proposed limitations involving the use of toll-free numbers and mandatory written presubscription. These companies may experience an adverse economic impact in that they will have to change the manner in which they provide services to secure billing.

The Commission has only limited unverifiable information to predict either the total number of audiotext information service providers, or the percentage of providers that qualify as small entities. Audiotext Information Service providers are not subject to federal licensing or reporting requirements. In 1996, staff had been able to obtain from industry sources only an informal estimate that the total number of these entities operating, which at that time was noted as probably somewhere between 10,000 and 20,000 total operating entities. Although the Commission asked for comment as to the number of small businesses that would have been affected by regulations proposed in this area in 1996, the Commission received no data in comments. Even assuming that this rough estimate is correct, we cannot, with certainty identify what portion of such providers might be providing services in a manner that would subject them to the proposed regulations governing toll-free numbers and presubscription agreements, or predict what portion of all such providers are small businesses. We invite parties commenting on this IRFA to provide information as to the number of small businesses that would be affected by our proposed regulations and to identify alternatives that would reduce the burden on these entities while still ensuring that consumers are protected adequately.

*All Other Information Services.* “This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).” We note that, in our Notice, we have described activities such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar Internet Protocol-enabled services. The SBA has developed a small business size standard for this category; that size standard is \$6 million or less in average annual receipts. According to United States Bureau of the Census (the Census Bureau) data for 1997, there were 195 firms in this category that operated for the entire year. Of these, 172 had annual receipts of under \$5 million, and an additional nine firms had receipts of between \$5

million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

*Providers of Telecommunications and Other Services.* We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.” The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

*Total Number of Telephone Companies Affected.* The Census Bureau reports that, at the end of 1997, there were 6,239 firms engaged in providing telephone services, as defined therein. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, mobile service carriers, operator service providers, pay telephone operators, personal communications service (PCS) providers, covered small mobile radio (SMR) providers, and resellers. It seems certain that some of those 6,239 telephone service firms may not qualify as small entities because they are not “independently owned and operated.” For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that 6,239 or fewer telephone service firms are small entity telephone service firms that may be affected by the policies and rules proposed in this NPRM.

*Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.

According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard,



the great majority of firms can be considered small.

*Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent LECs. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,337 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed policies and actions.

*Competitive LECs, Competitive Access Providers (CAPs), and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 609 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 carriers, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 35 carriers have reported that they are "Other Local Service Providers." Of the 35, an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Service Providers" are small entities that may be affected by our proposed policies and actions.

*Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 133 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 127 have 1,500 or fewer employees and six have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be

affected by our proposed policies and actions.

*Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 261 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange carriers are small entities that may be affected by our proposed policies and actions.

*Operator Service Provider (OSP).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed policies and actions.

*Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 37 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our proposed policies and actions.

*Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers,

OSP, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission's data, 42 companies reported that their primary telecommunications service activity was the provision of payphone services. Of these 42 companies, an estimated 37 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most "Other Toll Carriers" are small entities that may be affected by our proposed policies and actions.

*Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of Paging and Cellular and Other Wireless Telecommunications. Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997, show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997, show that there were 977 firms in this category, total, that operated for the entire year.

Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the great majority of firms can, again, be considered small. *Narrowband Personal Communications Services.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994, and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the



Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*. A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards. A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

**Common Carrier Paging.** The SBA has developed a small business size standard for wireless firms within the broad economic census categories of Cellular and Other Wireless Telecommunications. Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997, show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small.

In the *Paging Second Report and Order*, the Commission adopted a size standard for “small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. The SBA has approved this definition. An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs

commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 608 private and common carriers reported that they were engaged in the provision of either paging or “other mobile” services. Of these, we estimate that 589 are small, under the SBA-approved small business size standard. We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

#### **Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

There are several compliance requirements addressed in this item. One, carriers are responsible for assuring that toll-free numbers, when they appear on a telephone bill, must appear in a separate section of the bill in order to make it easier for consumers to understand charges that stem from calls to toll-free numbers. Carriers are already required to separate out a variety of calls, e.g. local versus long distance; therefore, we do not expect this compliance requirement to be particularly burdensome for carriers, even small carriers.

This is not a new requirement, just a clarification of an existing one. Two, in order to operate outside 900 numbers, all audiotext information services—not only those using toll-free numbers—must be provided pursuant to a written (or the electronic equivalent) presubscription agreement or made through payments involving direct remittance, prepaid account, or debit, credit, charge, or calling cards. These proposed policies and rules are designed to clarify the existing requirement that the presubscription or comparable agreement be in writing or make use of one of the payment methods discussed above. As such, any proposed policy or rule changes do not constitute an additional compliance burden.

#### **Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternative Considered**

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) The establishment of differing compliance or reporting requirements or timetables that take into

account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

Commenters, in 2003, noted that audiotext service providers found the 900 number regime has become a difficult environment in which to operate a business. Some businesses complained that charges for audiotext information services were dropped from carriers’ bills. In order to address this concern we are considering allowing carriers to accept recordings of customer oral verifications as evidence that charges through 900 numbers should not be removed from the telephone bill. These verifications would indicate that the customer understood and agreed to the 900 number charges. We expect this alternative to assist small businesses, both carriers and audiotext information service providers, by facilitating billing on a telephone bill as opposed to a credit card or other such means. We note in the primary item that disputes over such charges were greatly reduced once oral verification was implemented in another country.

#### **Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules**

Federal Trade Commission (FTC) regulations pursuant to the Telephone Disclosure and Dispute Resolution Act (TDDRA), prescribe federal standards governing some audiotext information service providers and all entities, including common carriers, which bill and collect for interstate information services. The FTC has noted that the expansion of the definition of covered services under its governing statutes from Titles II and III of TDDRA, does not have any effect upon the main definition of pay-per-call services under Title I of TDDRA, codified as section 228. The FTC initiated a proceeding in this area in 1998, but at this time it has not issued final conclusions.

#### **Ordering Clauses**

Accordingly, pursuant to the authority contained in sections 1–4, 201(b), 228 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201(b), 228 and 303(r); and 47 CFR 64.1501–1515 of the Commission’s rules, this *Notice of Proposed Rulemaking* is adopted.

The Commission’s Consumer & Governmental Affairs Bureau, Reference

Information Center, shall send a copy of this *Notice of Proposed Rulemaking*, including the *Initial Regulatory Flexibility Analysis*, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

[FR Doc. 04-23192 Filed 10-14-04; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

[CS Docket No. 95-184; MM Docket No. 92-260; FCC 04-228]

#### Telecommunications Services Inside Wiring, Customer Premises Equipment and Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission addresses an amendment to a Note in its rules to include wiring behind sheet rock as an example, along with wiring located behind brick, metal conduit or cinder blocks, as wiring considered to be “physically inaccessible” as that term is used regarding the Commission’s cable television inside wiring rules. The consequence of that conclusion is to move the point at which a competing multichannel video programming distributor (“MVPD”) can gain access to wiring located behind sheet rock closer to the incumbent cable operator’s junction box, thereby facilitating competition between MVPD providers to serve an MDU. The Court of Appeals found that the Commission offered no reasoned basis for the amendment to add sheet rock and remanded the case back to the Commission for further consideration. This document seeks additional comment from interested parties regarding the Commission’s conclusion that cable wiring located behind sheet rock is “physically inaccessible” as that term is used in our rules.

**DATES:** Comments are due November 15, 2004 and reply comments are due December 6, 2004.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. See

Supplementary Information for filing instructions.

#### FOR FURTHER INFORMATION CONTACT:

Karen A. Kosar, Media Bureau at (202) 418-1053 or via internet at [karen.kosar@fcc.gov](mailto:karen.kosar@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission’s Further Notice of Proposed Rule Making (FNPRM), CS Docket No. 95-184 and MM Docket No. 92-260, adopted September 22, 2004 and released September 29, 2004. The full text is available for inspection and copying during normal business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW, CY-A267, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference center may contact Bill Cline at (202) 418-0267 (voice), (202) 418-7365 (TTY), or [bccline@fcc.gov](mailto:bccline@fcc.gov). Documents are also available from the Commission’s Electronic Comment Filing System. Documents are available electronically in ASCII, Word 97, and Adobe Acrobat. Copies of documents also may be obtained from Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 488-5300 or (800) 378-3160, e-mail [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com), or via its Web site <http://www.bcpiweb.com>. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call consumer and Governmental Affairs Bureau at 202-418-0531 (voice), 202-418-7365 (TTY).

1. This Further Notice of Proposed Rule Making (FNPRM) is issued in response to a decision issued by the United States Court of Appeals for the District of Columbia Circuit regarding amendment of the Commission’s cable television inside wiring rules. In the First Order on Reconsideration and Second Report and Order in the proceeding, the Commission, in part, modified its rules to provide that home run wiring located behind sheet rock is considered to be physically inaccessible for purposes of determining the demarcation point between home wiring and home run wiring. At issue in the Appeals Court decision is the Commission’s amendment of the Note to § 76.5(mm)(4) of the Commission’s rules to indicate that wiring embedded in sheet rock would be considered physically inaccessible. Prior to its Reconsideration Order and amendment of the Note to § 76.5(mm)(4), the Commission determined under its definition of “physically inaccessible,” for example, that wiring embedded in

brick, metal conduit or cinder blocks would likely be physically inaccessible; wiring simply enclosed within hallway molding would not. By expanding the Note to § 76.5(mm)(4) to include sheet rock in its Reconsideration Order, the Court of Appeals found that the Commission offered no reasoned basis for the amendment and remanded the case to the Commission for further consideration.

2. In response to the Court’s decision, the FNPRM seeks additional comment on whether accessing inside wiring behind sheet rock (1) will involve significant modification of or damage to preexisting structural elements and (2) will add significantly to the difficulty and cost of wiring an MDU. The FNPRM seeks comment as to whether our conclusions in general as stated in the Reconsideration Order with regard to § 76.5(mm)(4) of the rules and the applicable Note are correct. In addition, the FNPRM seeks comment as to whether there is an additional or more appropriate standard that would support the amendment of our rule in light of the Court’s remand. The FNPRM also seeks comment as to whether any specific language changes or eliminations should be made to our rule.

#### I. Procedural Matters

##### A. Initial Regulatory Flexibility Analysis

3. As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this document. The IRFA is set forth in the below. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the FNPRM, and they should have a separate and distinct heading designating them as responses to the IRFA.

##### B. Paperwork Reduction Act

4. This FNPRM does not contain proposed information collections subject to the Paperwork Reduction Act of 1995 (“PRA”), Public Law 104-13. In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

### C. Ex Parte Rules—Permit-but-Disclose

5. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206.

### D. Comment Information

6. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before November 15, 2004 and reply comments on or before December 6, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

7. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC, 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners.

Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC, 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

8. Parties also must serve either one copy of each filing via e-mail or two paper copies to Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone (202) 488-5300 or (800) 378-3160, e-mail [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com), or via its Web site at <http://www.bcpiweb.com>. In addition, parties should serve one copy of each filing via e-mail or one paper copy to Karen Kosar, Media Bureau, 445 12th Street, SW., 4-C453, Washington, DC, 20554. Washington, DC, 20554.

## II. Initial Regulatory Flexibility Analysis

9. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"), the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules addressed in the Further Notice of Proposed Rulemaking ("FNPRM"). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed in accordance with the same filing deadlines for comments on the FNPRM.

### A. Need for and Objectives of the Further Notice of Proposed Rulemaking

10. This FNPRM is initiated in response to a decision issued by the United States Court of Appeals for the District of Columbia regarding amendment of the Commission's cable television inside wiring rules. In its First Order on Reconsideration and Second Report and Order in this proceeding, the Commission modified its rules to provide that home run wiring located behind sheet rock is considered to be physically inaccessible for purposes of determining the demarcation point between home wiring and home run wiring in multiple dwelling units ("MDUs"). Specifically, the Commission amended the Note to § 76.5(mm)(4) of the rules to include wiring behind sheet rock as an example, along with wiring located behind brick, metal conduit or cinder blocks, as wiring considered to be "physically

inaccessible" as that term is used in § 76.5(mm)(4) of the rules and the appended Note. The consequence of that conclusion is to move the point at which a competing multichannel video programming distributor ("MVPD") can gain access to wiring located behind sheet rock closer to the incumbent cable operator's junction box, thereby facilitating competition between MVPD providers to serve an MDU. The Court of Appeals found that the Commission offered no reasoned basis for the amendment to add sheet rock as an example of material to be considered as a "preexisting structural element" in defining physical inaccessibility and remanded the case to the Commission for further consideration.

### B. Description and Estimate of the Number of Small Entities Impacted

11. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

12. *Cable and Other Program Distribution.* This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. The SBA has developed a small business size standard for this census category, which includes all such companies generating \$12.5 million or less in revenue annually. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under \$10 million and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies involved herein.

13. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business

size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. The most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies involved herein.

14. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on the available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, and therefore are unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

15. *Cable Television Relay Service*. This service includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has defined a small business size standard for Cable and Other Program Distribution, consisting of all such companies having annual receipts of no more than \$12.5 million. According to Census Bureau data for 1997, there were 1,311 firms in the industry category Cable and Other Program Distribution, total, that operated for the entire year. Of this total, 1,180 firms had annual

receipts of \$10 million or less, and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. Thus, under this standard, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies involved herein.

16. *Local Multipoint Distribution Service*. Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

17. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service*. Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission defined "small business" as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years. The SBA has approved of this standard. The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 claimed status as a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately

392 incumbent MDS licensees that have gross revenues that are not more than \$40 million and are thus considered small entities.

18. In addition, and as noted *supra*, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating \$12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under \$10 million, and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the proposed rules and policies.

19. Finally, while SBA approval for a Commission-defined small business size standard applicable to ITFS is pending, educational institutions are included in this analysis as small entities. There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, we tentatively conclude that at least 1,932 ITFS licensees are small businesses.

20. *Open Video Services*. Open Video Service (OVS) systems provide subscription services. The SBA has created a small business size standard for Cable and Other Program Distribution. This standard provides that a small entity is one with \$12.5 million or less in annual receipts. The Commission has certified approximately 100 OVS operators to serve 75 areas, and some of these are currently providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that those OVS operators remaining might qualify as small businesses that may be affected by the rules and policies proposed herein.

#### *C. Description of Projected Recording, Recordkeeping, and Other Compliance Requirements*

21. The retention or deletion of the word "sheet rock" to the Note to § 76.5(mm)(4) of the Commission's rules would not impose any additional reporting or recordkeeping

requirements. With regard to other compliance requirements, we note as indicated above, that the FNPRM is initiated in response to a decision issued by the United States Court of Appeals for the District of Columbia regarding amendment of the Commission's cable television inside wiring rules. The Court seeks support for the Commission's decision to add wiring behind sheet rock as an example of wiring considered to be "physically inaccessible" as that term is defined by § 76.5(mm)(4) of the Commission's rules and the appended Note. As stated, the consequence of the Commission's underlying decision is to move the point at which a competing video provider can gain access to wiring located behind sheet rock closer to the incumbent cable operator's junction box, thereby facilitating competition between video providers to serve an MDU.

22. No alternatives to our proposal herein are mentioned because we do not anticipate a negative impact on smaller entities. However, we welcome comment on modifications of the

Commission's conclusions if based on evidence of potential differential impact.

*D. Steps Taken To Minimize Significant Impact on Small Entities and Significant Alternatives Considered*

23. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

*E. Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Rules and Policies Herein*

24. None.

### III. Ordering Clauses

25. *It is ordered* that, pursuant to sections 1, 4(i), 601, 623, 624, and 632 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 521, 543, 544 and 552 *comment is hereby sought* on the analysis, questions, discussions and statement of issues in this Further Notice of Proposed Rulemaking.

26. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the Further Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04-23186 Filed 10-14-04; 8:45 am]

**BILLING CODE 6712-01-P**

# Notices

Federal Register

Vol. 69, No. 199

Friday, October 15, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. 04-033-1]

#### General Conference Committee of the National Poultry Improvement Plan; Reestablish

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of reestablishment.

**SUMMARY:** We are giving notice that the Secretary of Agriculture has reestablished the General Conference Committee of the National Poultry Improvement Plan for a 2-year period. The Secretary has determined that the Committee is necessary and in the public interest.

**FOR FURTHER INFORMATION CONTACT:** Mr. Andrew Rhorer, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, 1498 Klondike Road, Suite 200, Conyers, GA 30094-5104; (770) 922-3496.

**SUPPLEMENTARY INFORMATION:** The purpose of the General Conference Committee of the National Poultry Improvement Plan (Committee) is to maintain and ensure industry involvement in Federal administration of matters pertaining to poultry health.

The Committee Chairperson and the Vice Chairperson shall be elected by the Committee from among its members. There are seven members on the Committee. This Committee differs somewhat from other advisory committees in the selection process and composition of its membership. The poultry industry elects the members of the Committee. The members represent six geographic areas with one member-at-large. The membership is not subject to the U.S. Department of Agriculture's review. A formal request for nominations for membership is published in the **Federal Register**.

Done in Washington, DC, this 8th day of October 2004.

**John Surina,**  
Deputy Assistant Secretary for  
Administration.

[FR Doc. E4-2653 Filed 10-14-04; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF AGRICULTURE

### Forest Agency

#### Newspapers Used for Publication of Legal Notices by the International Region; Utah, Idaho, Nevada, and Wyoming

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice lists newspapers that will be used by the ranger districts, forests and regional office of the Intermountain Region to publish legal notices required under 36 CFR 215, 217, and 218. The intended effect of this action is to inform interested members of the public which newspapers the Forest Service will use to publish notices of proposed actions and notices of decision. This will provide the public with constructive notice of Forest Service proposals and decisions, provide information on the procedures to comment or appeal, and establish the date that the Forest Service will use to determine if comments or appeals were timely.

**DATES:** Publication of legal notices in the listed newspapers will begin on or after October 1, 2004. The list of newspapers will remain in effect until April 1, 2005, when another notice will be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Priscilla McLain, Regional Appeals Coordinator, Intermountain Region, 324 25th Street, Ogden, UT 84401, and phone (801) 625-5146.

**SUPPLEMENTARY INFORMATION:** The administrative procedures at 36 CFR 215, 217, and 218 require the Forest Service to publish notices in a newspaper of general circulation. The content of the notices is specified in 36 CFR 215, 217 and 218. In general, the notices will identify: the decision or project, by title or subject matter, the name and title of the official making the decision; how to obtain additional information; and where and how to file comments or appeals. The date the

notice is published will be used to establish the official date for the beginning of the comment or appeal period. The newspapers to be used are as follows:

#### Regional Forester, Intermountain Region

For decisions made by the Regional Forester affecting National Forests in Idaho: *Idaho Statesman*, Boise, Idaho.

For decisions made by the Regional Forester affecting National Forests in Nevada: *Reno Gazette-Journal*, Reno, Nevada.

For decisions made by the Regional Forester affecting National Forests in Wyoming: *Casper Star-Tribune*, Casper, Wyoming.

For decisions made by the Regional Forester affecting National Forests in Utah: *Salt Lake Tribune*, Salt Lake City, Utah.

For decisions made by the Regional Forester that affect all National Forests in the Intermountain Region; *Salt Lake Tribune*, Salt Lake City, Utah.

#### Ashley National Forest

Ashley Forest Supervisor decisions: *Vernal Express*, Vernal, Utah.

Duchesne District Ranger decisions: *Uinta Basin Standard*, Roosevelt, Utah.

Flaming Gorge District Ranger for decisions affecting Wyoming: *Rocket Miner*, Rock Springs, Wyoming.

Flaming Gorge District Ranger for decisions affecting Utah: *Vernal Express*, Vernal, Utah.

Roosevelt District Ranger decisions: *Uinta Basin Standard*, Roosevelt, Utah.

Vernal District Ranger decisions: *Vernal Express*, Vernal, Utah.

#### Boise National Forest

Boise Forest Supervisor decisions: *Idaho Statesman*, Boise, Idaho.

Cascade District Ranger decisions: *Long Valley Advocate*, Cascade, Idaho.

Emmett District Ranger decisions: *Messenger-Index*, Emmett, Idaho.

Idaho City District Ranger decisions: *Idaho Statesman*, Boise, Idaho.

Lowman District Ranger decisions: *Idaho World*, Garden Valley, Idaho.

Mountain Home District Ranger decisions: *Idaho Statesman*, Boise, Idaho.

#### Bridger-Teton National Forest

Bridger-Teton Forest Supervisor decisions: *Casper Star-Tribune*, Casper, Wyoming.

Big Piney District Ranger decisions: *Casper Star-Tribune*, Casper, Wyoming.  
 Buffalo District Ranger decisions: *Casper Star-Tribune*, Casper, Wyoming.  
 Greys River District Ranger decisions: *Casper Star-Tribune*, Casper, Wyoming.  
 Jackson District Ranger decisions: *Casper Star-Tribune*, Casper, Wyoming.  
 Kemmerer District Ranger decisions: *Casper Star-Tribune*, Casper, Wyoming.  
 Pinedale District Ranger decisions: *Casper Star-Tribune*, Casper, Wyoming.

#### **Caribou-Targhee National Forest**

Caribou-Targhee Forest Supervisor decisions for the Caribou portion: *Idaho State Journal*, Pocatello, Idaho.  
 Caribou-Targhee Forest Supervisor decisions for the Targhee portion: *Post Register*, Idaho Falls, Idaho.  
 Ashton District Ranger decisions: *Post Register*, Idaho Falls, Idaho.  
 Dubois District Ranger decisions: *Post Register*, Idaho Falls, Idaho.  
 Island Park District Ranger decisions: *Post Register*, Idaho Falls, Idaho.  
 Montpelier District Ranger decisions: *Idaho State Journal*, Pocatello, Idaho.  
 Palisades District Ranger decisions: *Post Register*, Idaho Falls, Idaho.  
 Soda Springs District Ranger decisions: *Idaho State Journal*, Pocatello, Idaho.  
 Teton Basin District Ranger decisions: *Post Register*, Idaho Falls, Idaho.  
 Westside District Ranger decisions: *Idaho State Journal*, Pocatello, Idaho.

#### **Dixie National Forest**

Dixie Forest Supervisor decisions: *Daily Spectrum*, St. George, Utah.  
 Cedar City District Ranger decisions: *Daily Spectrum*, St. George, Utah.  
 Escalante District Ranger decisions: *Daily Spectrum*, St. George, Utah.  
 Pine Valley District Ranger decisions: *Daily Spectrum*, St. George, Utah.  
 Powell District Ranger decisions: *Daily Spectrum*, St. George, Utah.  
 Teasdale District Ranger decisions: *Richfield Reaper*, Richfield, Utah.

#### **Fishlake National Forest**

Fishlake Forest Supervisor decisions: *Richfield Reaper*, Richfield, Utah.  
 Beaver District Ranger decisions: *Richfield Reaper*, Richfield, Utah.  
 Fillmore District Ranger decisions: *Richfield Reaper*, Richfield, Utah.  
 Loa District Ranger decisions: *Richfield Reaper*, Richfield, Utah.  
 Richfield District Ranger decisions: *Richfield Reaper*, Richfield, Utah.

#### **Humboldt-Toiyabe National Forests**

Humboldt-Toiyabe Forest Supervisor decisions for the Humboldt portion: *Elko Daily Free Press*, Elko, Nevada.  
 Humboldt-Toiyabe Forest Supervisor decisions for the Toiyabe portion: *Reno Gazette-Journal*, Reno, Nevada.

Austin District Ranger decisions: *Reno Gazette-Journal*, Reno, Nevada.  
 Bridgeport District Ranger decisions: *Mammoth Times*, Mammoth Lakes, California.  
 Carson District Ranger decisions: *Reno Gazette-Journal*, Reno, Nevada.  
 Ely District Ranger decisions: *Ely Daily Times*, Ely, Nevada.  
 Jarbridge District Ranger decisions: *Elko Daily Free Press*, Elko, Nevada.  
 Mountain City District Ranger decisions: *Elko Daily Free Press*, Elko, Nevada.

Ruby Mountains District Ranger decisions: *Elko Daily Free Press*, Elko, Nevada.

Santa Rosa District Ranger decisions: *Humboldt Sun*, Winnemucca, Nevada.  
 Spring Mountains National Recreation Area District Ranger decisions: *Las Vegas Review Journal*, Las Vegas, Nevada.

Tonopah District Ranger decisions: *Tonopah Times Bonanza-Goldfield News*, Tonopah, Nevada.

#### **Manti-Lasal National Forest**

Manti-LaSal Forest Supervisor decisions: *Sun Advocate*, Price, Utah.  
 Ferron District Ranger decisions: *Emery County Progress*, Castle Dale, Utah.  
 Moab District Ranger decisions: *Times Independent*, Moab, Utah.  
 Monticello District Ranger decisions: *San Juan Record*, Monticello, Utah.  
 Price District Ranger decisions: *Sun Advocate*, Price, Utah.  
 Sanpete District Ranger decisions: *Sanpete Messenger*, Manti, Utah.

#### **Payette National Forest**

Payette Forest Supervisor decisions: *Idaho Statesman*, Boise, Idaho.  
 Council District Ranger decisions: *Adams County Record*, Council, Idaho.  
 Krassel District Ranger decisions: *Star News*, McCall, Idaho.  
 McCall District Ranger decisions: *Star News*, McCall, Idaho.  
 New Meadows District Ranger decisions: *Star News*, McCall, Idaho.  
 Weiser District Ranger decisions: *Signal American*, Weiser, Idaho.

#### **Salmon-Challis National Forests**

Salmon-Challis Forest Supervisor decisions for the Salmon portion: *The Recorder-Herald*, Salmon, Idaho.  
 Salmon-Challis Forest Supervisor decisions for the Challis portion: *The Challis Messenger*, Challis, Idaho.  
 Challis District Ranger decisions: *The Challis Messenger*, Challis, Idaho.  
 Leadore District Ranger decisions: *The Recorder-Herald*, Salmon, Idaho.  
 Lost River District Ranger decisions: *The Challis Messenger*, Challis, Idaho.

Middle Fork District Ranger decisions: *The Challis Messenger*, Challis, Idaho.

North Fork District Ranger decisions: *The Recorder-Herald*, Salmon, Idaho.

Salmon/Cobalt District Ranger decisions: *The Recorder-Herald*, Salmon, Idaho.

Yankee Fork District Ranger decisions: *The Challis Messenger*, Challis, Idaho.

#### **Sawtooth National Forest**

Sawtooth Forest Supervisor decisions: *The Times News*, Twin Falls, Idaho.

Fairfield District Ranger decisions: *The Times News*, Twin Falls, Idaho.

Ketchum District Ranger decisions: *Idaho Mountain Express*, Ketchum, Idaho.

Minidoka District Ranger decisions: *The Times News*, Twin Falls, Idaho.

Sawtooth National Recreation Area: *The Challis Messenger*, Challis, Idaho.

#### **Uinta National Forest**

Uinta Forest Supervisor decisions: *The Daily Herald*, Provo, Utah.

Heber District Ranger decisions: *The Daily Herald*, Provo, Utah.

Pleasant Grove District Ranger decisions: *The Daily Herald*, Provo, Utah.

Spanish Fork District Ranger decisions: *The Daily Herald*, Provo, Utah.

#### **Wasatch-Cache National Forest**

Wasatch-Cache Forest Supervisor decisions: *Salt Lake Tribune*, Salt Lake City, Utah.

Evanston District Ranger decisions: *Uinta County Herald*, Evanston, Wyoming.

Kamas District Ranger decisions: *Salt Lake Tribune*, Salt Lake City, Utah.

Logan District Ranger decisions: *Logan Herald Journal*, Logan, Utah.

Mountain View District Ranger decisions: *Unita County Herald*, Evanston, Wyoming.

Ogden District Ranger decisions: *Ogden Standard Examiner*, Ogden, Utah.

Salt Lake District Ranger decisions: *Salt Lake Tribune*, Salt Lake City, Utah.

Dated: September 29, 2004.

**Jack G. Troyer,**

*Regional Forester.*

[FR Doc. 04-23156 Filed 10-14-04; 8:45 am]

**BILLING CODE 3410-11-M**



**DEPARTMENT OF AGRICULTURE****Forest Service****Notice of Availability Application for Transportation and Utility Systems and Facilities for the Village at Wolf Creek Draft Environmental Impact Statement**

**AGENCY:** Forest Service, Rio Grande National Forest.

**ACTION:** Notice of availability and public meetings.

**SUMMARY:** The United States Department of Agriculture (USDA) Forest Service (USFS), Rio Grande National Forest (RGNF) announces the availability of the *Application for Transportation and Utility Systems and Facilities for the Village at Wolf Creek Draft Environmental Impact Statement (EIS)*. Draft EIS was prepared in accordance with the Council on Environmental Quality's National Environmental Policy Act (NEPA) Implementing Regulations (40 CFR parts 1500–1508). The EIS analyzes the environmental impacts of a proposal to authorize the construction and use of road and utility corridors across Federal land administered by the USFS RGNF to a 287.5-acre private parcel of land (private property). Four alternatives are considered: (1) The No Action Alternative; (2) the Proposed Action (Tranquility Road); (3) the Snow Shed—East Village Access Alternative; and (4) the Dual Access Road Alternative—Tranquility Road and the Snow Shed—East Village Access Alternative. More than one access road and utility corridor may be authorized by the USFS as a result of the Application.

**DATES:** USFS invites Federal agencies, State and local governments, Native American tribes, and the public to comment on the Draft EIS. The comment period extends for forty-five days from the publication of the Notice of Availability published by the Environmental Protection Agency on October 8, 2004. Comments submitted after that date will be considered to the extent practicable. The USFS will consider the comments in the preparation of the Final EIS. Public meetings to present information and receive written comments on the Draft EIS will be held at three locations. This information will also be published in local Colorado newspapers prior to the meetings. Any necessary changes will be announced in the local media and on the Web site noted in the **ADDRESSES** section of this notice. Written comments will be accepted at the public meetings.

The locations, dates, and times for these public meetings are as follows:

Tuesday, October 26, 2004 3 p.m.–7 p.m., Creede Community Center, Forest Service Road 503 #9, Creede, Colorado 81130.

Wednesday, October 27, 2004, 3 p.m.–7 p.m., South Fork Community Center, 0254 Highway 49, South Fork, Colorado 81154.

Thursday, October 28, 2004, 3 p.m.–7 p.m., Pagosa Springs Community Center, 451 Hot Springs Boulevard, Pagosa Springs, Colorado 81147.

The following Web site may be accessed for additional information: <http://www.fs.fed.us/r2/riogrande/planning/planning.htm>.

**ADDRESSES:** Send written comments on the Draft EIS or requests for copies of the Draft EIS to: VWC DEIS Comments, Tetra Tech Inc., 5205 Leesburg Pike, Suite 1400, Falls Church, VA 22041. You may send electronic comments to [comments-rocky-mountain-riogrande@fs.fed.us](mailto:comments-rocky-mountain-riogrande@fs.fed.us), or comments may be faxed to (703) 931–9222.

A copy of the Draft EIS is available on the Internet at: <http://www.fs.fed.us/r2/riogrande/planning/planning.htm>.

**FOR FURTHER INFORMATION CONTACT:** Contact Mr. Robert Dalrymple, Forest Planner, USDA–USFS, Rio Grande National Forest, (719) 852–5941. Refer to **SUPPLEMENTARY INFORMATION** regarding public disclosure of submitted comment information.

**SUPPLEMENTARY INFORMATION:** The Rio Grande National Forest is comprised of 1.86 million acres located in southwestern Colorado. Denver, Colorado, is approximately 300 miles to the north of the RGNF, and Albuquerque, New Mexico, is approximately 270 miles to the south. The Continental Divide runs for 236 miles along most of the western border of the RGNF. The Wolf Creek Ski Area (Ski Area) is located on lands administered by the RGNF.

On May 14, 1987, the USFS conveyed to the Leavell-McCombs Joint Venture 287.5 acres of private property in exchange for property in Saguache County, Colorado. The 287.5 acres is entirely surrounded by Federal lands; a condition that was recognized at the time the land exchange was approved. The 287.5-acre private property is also entirely within the Wolf Creek Ski Corporation (WCSC) Special Use Permit (SUP) boundary managed by the USFS as a winter use area. Presently, the Leavell-McCombs Joint Venture is requesting authorization to construct and use road and utility corridors across Federal land to access their private property.

The all-weather, year-round access road would not exceed 2,350 feet in

length within a 60-foot width. Any new or upgraded sections of the roadway would be constructed to USFS specifications and would cross USFS land from United States Highway 160 (Highway 160) to the private property. Approximately 2,100 feet of this proposed route has been developed as a road, known as “Tranquility Road,” for access to Ski Area parking lots and will be operated and maintained under the WCSC SUP. Vehicle traffic would consist of passenger vehicles, buses, and other vehicles and transport necessary to develop, construct, operate, and support the residents and businesses associated with the Village at Wolf Creek.

The Application would also grant two 10-foot wide permanent utility corridors for the installation, operation, maintenance, repair, and replacement of electrical transmission lines and facilities; television cables, communication cables and lines, fiber-optic lines, and other utilities as required to serve the private property (Village at Wolf Creek). An additional 1,000-foot long, 20-foot wide utility corridor from Highway 160 to the northwest section of the property is also proposed.

The responsible Official is the Forest Supervisor, Rio Grande National Forest, 1803 West Highway 160, Monte Vista, CO 81132. The NEPA decision to be made by the USFS official is whether or not to authorize the Application for Transportation and Utility Systems and Facilities on Federal lands as proposed by the Leavell-McCombs Joint Venture, or alternatives to the proposed access road(s) and utility corridors.

**No Action:** The No Action Alternative is the current USFS management situation. Under this alternative, USFS would not issue the Applicant any special-use authorization for access or utility corridors across USFS lands to the private property. However, this action would not preclude the Applicant from continuing to have limited access to the private property via Forest System Road (FSR) 391. The Applicant has stated the intent to develop 2,172 units on the private property as the Village at Wolf Creek even if the No Action Alternative is selected by the USFS.

**Proposed Action:** The Applicant submitted a request for authorization to construct and use an 80-foot wide corridor across USFS lands for both road and utility purposes, from Highway 160 to the private property via an extension of “Tranquility Road”. Tranquility Road has a 23-foot driving surface, and WCSC plans to complete it in 2004. To access the western boundary



of the private property, the Applicant is proposing to extend Tranquility Road by adding approximately 250 feet of road length. The extensions would have a minimum 24-foot wide running surface. The road access associated with this alternative would merge into the current entrance to the Ski Area at the junction with Highway 160. Utility corridors to the east and the north of the approximately 2,350-foot access road would include buried electrical transmission lines, television and communication cables, fiber-optic lines, and other utilities. An additional 1,000-foot long, 20-foot wide utility corridor from Highway 160 to the northwest section of the private property is also proposed. Public access across the private property on FSR 391 would remain unchanged from the current USFS management conditions.

**Snow Shed—East Village Access Alternative:** The Snow Shed—East Village Access Alternative would authorize the construction and use of an access road and three utility corridors that begin on Highway 160, at a point approximately 0.33 mile east of the current entrance to the Ski Area and approximately 0.25 mile west of the Snow Shed. Utility corridors alongside the approximately 1,500-foot access road would include buried electrical transmission lines, television and communication cables, fiber-optic lines, and other utilities. Public access across private lands on FSR 391 would remain unchanged from the current management conditions.

**Dual Access Road Alternative:** This alternative provides two access roads to the private property and utility corridors associated with those roads. This alternative would be a combination of Alternative 2 (Proposed Action) and the first 750 feet of Alternative 3 (from Highway 160 to the northwestern boundary of the private property). Public access across private lands on FSR 391 would remain unchanged from the current management conditions.

After the end of the public comment period, the USFS will consider and respond to the comments received, revise the Draft EIS as appropriate, and issue the Final EIS. The USFS will consider the analysis in the Final EIS, along with other information, in making a decision on the request for authorized use of the access road(s) and corridor(s).

#### Comments Requested

The Notice of Availability published by the Environmental Protection Agency on October 8, 2004 initiated the public comment process that guides the development of the Final EIS. The USFS invites written comments and

suggestions on the proposed action and alternatives, including any issues to consider, as well as any concerns relevant to the analysis. Pursuant to 30 CFR 215.13(b), only those individuals or organizations who submitted substantive comments during the comment period may file an appeal.

Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. If you wish to withhold your name or street address from public review or from disclosure under the *Freedom of Information Act* (FOIA), you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law, but persons requesting such confidentiality should be aware that under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The USFS will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days. All submissions from organizations and business, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision pursuant to 36 CFR part 215. Comments and USFS responses will be addressed in the Final EIS.

Dated: October 8, 2004.

**Peter L. Clark,**

*Forest Supervisor.*

[FR Doc. 04-23155 Filed 10-14-04; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Intergovernmental Advisory Committee Meeting, Northwest Forest Plan

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Intergovernmental Advisory Committee (IAC), Northwest Forest Plan (NWFP), will meet on

November 3, 2004, in the Broadway/Weidler Conference Rooms at the DoubleTree at Lloyd Center Hotel, 1000 NE Multnomah, Portland, Oregon (503-249-3110). The meeting will begin at 9 a.m. and adjourn at approximately 4 p.m. The purpose of the meeting, in general, is to continue committee discussions related to Northwest Forest Plan implementation. Meeting agenda items include, but are not limited to the 10-year monitoring report process, Natural Resources Conservation Service Conservation Security Program, Pacific Northwest Aquatic Monitoring Partnerships, update on Bureau of Land Management Resource Management Plan Revisions, and several short written or oral reports related to ongoing implementation improvement activities. The meeting is open to the public and fully accessible for people with disabilities. A 15-minute time slot is reserved for public comments at 9:15 a.m. Interpreters are available upon request at least 10 days prior to the meeting. Written comments may be submitted for the meeting record. Interested persons are encouraged to attend.

#### FOR FURTHER INFORMATION CONTACT:

Questions regarding this meeting may be directed to Kath Collier, Management Analyst, Regional Ecosystem Office, 333 SW First Avenue, P.O. Box 3623, Portland, OR 97208 (telephone: 503-808-2165).

Dated: October 7, 2004.

**Anne Badgley,**

*Designated Federal Official.*

[FR Doc. 04-23144 Filed 10-14-04; 8:45 am]

**BILLING CODE 3410-11-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Wrangell-Petersburg Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** Wrangell-Petersburg Resource Advisory Committee (RAC) will meet from 1 p.m. until 5:15 p.m. (or until the conclusion of public testimony) on Friday, November 5, and from 8 a.m. until 2 p.m., Saturday, November 6, 2004, in Petersburg, Alaska. The purpose of this meeting is to review, discuss and potentially recommend for funding proposals received pursuant to Title II, Public Law 106-393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to

States'' Act. Public testimony regarding the proposals will also be taken.

**DATES:** The meeting will be held commencing at 1 p.m. on Friday, November 5, through 2 p.m., Saturday, November 6, 2004.

**ADDRESSES:** The meeting will be held at the Petersburg Lutheran Church Holy Cross House, 407 Fram Street, Petersburg, Alaska.

**FOR FURTHER INFORMATION CONTACT:** Michael Davis, Acting Wrangell District Ranger, P.O. Box 51, Wrangell, AK 99929, phone (907) 874-2323, e-mail [michaeldavis@fs.fed.us](mailto:michaeldavis@fs.fed.us), or Patty Grantham, Petersburg District Ranger, P.O. Box 1328, Petersburg, AK 99833, phone (907) 772-3871, e-mail [pagrantham@fs.fed.us](mailto:pagrantham@fs.fed.us). For further information on RAC history, operations, and the application process, a Web site is available at [www.fs.fed.us/r10/ro/payments](http://www.fs.fed.us/r10/ro/payments). Once in the Web-site, follow the links to the Wrangell-Petersburg Resource Advisory Committee.

**SUPPLEMENTARY INFORMATION:** This meeting will focus on the review and discussion of proposals received by the RAC for funding under Title II of the Payments to States legislation (Pub. L. 106-393), particularly proposals that were of high interest to the committee, but lacked enough information for the committee to act. New information may be introduced concerning these proposals. New proposals (initial reading) may be discussed at this meeting. The committee may make recommendations for project funding at this meeting. A field trip to review proposals proximate to the Petersburg, Alaska, area may take place. The committee will also review a draft version of an informational newsletter/project solicitation document that will be sent to the public in the near future. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: October 7, 2004.

**Forrest Cole,**

*Forest Supervisor.*

[FR Doc. 04-23157 Filed 10-14-04; 8:45 am]

**BILLING CODE 3410-11-M**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Addition

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Addition to procurement list.

**SUMMARY:** This action adds to the Procurement List a product to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** November 14, 2004.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

**FOR FURTHER INFORMATION CONTACT:** Sheryl D. Kennerly, (703) 603-7740.

**SUPPLEMENTARY INFORMATION:** On June 18, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 34121) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product and impact of the addition on the current or most recent contractors, the Committee has determined that the product listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product to the Government.
2. The action will result in authorizing small entities to furnish the product to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the product proposed for addition to the Procurement List.

### End of Certification

Accordingly, the following product is added to the Procurement List:

#### Product:

*Product/NSN:* One Step Tub & Shower Cleaner, M.R. 584.

*NPA:* Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.

*Contract Activity:* Defense Commissary Agency (DeCA), Fort Lee, Virginia.

This action does not affect current contracts awarded prior to the effective

date of this addition or options that may be exercised under those contracts.

**Patrick Rowe,**

*Deputy Executive Director.*

[FR Doc. 04-23175 Filed 10-14-04; 8:45 am]

**BILLING CODE 6353-01-P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to procurement list.

**SUMMARY:** The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

*Comments Must be Received on or Before:* November 14, 2004.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

**FOR FURTHER INFORMATION CONTACT:** Sheryl D. Kennerly, (703) 603-7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.
2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.
3. There are no known regulatory alternatives which would accomplish

the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

#### End of Certification

The following products and services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

#### Products

*Product/NSN:* Battery Nonrechargeable, Lithium, 6135–01–351–1131.

*NPA:* Eastern Carolina Vocational Center, Inc., Greenville, North Carolina.

*Contract Activity:* Defense Supply Center Richmond, Richmond, Virginia.

*Product/NSN:* Cups, Hot and Cold Drink

7350–00–281–3211 (Cold Drink)

7350–00–641–4517 (Hot Drink)

7350–00–641–4519 (Hot Drink)

7350–00–641–4523 (Cold Drink)

7350–00–641–4576 (Hot Drink)

7350–00–641–4587 (Cold Drink)

7350–00–641–4589 (Cold Drink)

7350–00–641–4590 (Cold Drink)

7350–00–641–4591 (Cold Drink)

7350–00–641–4592 (Cold Drink)

7350–00–641–4593 (Cold Drink)

*NPA:* The Lighthouse for the Blind in New Orleans, New Orleans, Louisiana.

*Contract Activity:* GSA, Southwest Supply Center, Fort Worth, Texas.

*Product/NSN:* Gloves, Chemical Protective

8415–01–509–2898

8415–01–509–2902

8415–01–509–2904

8415–01–509–2905

8415–01–509–2916

*Product/NSN:* Socks, Chemical Protective

8415–01–509–2875

8415–01–509–2877

8415–01–509–2879

8415–01–509–2882

8415–01–509–2883

*NPA:* Industrial Opportunities, Inc., Marble, North Carolina.

*Contract Activity:* Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

*Product/NSN:* Lightsticks (Chemlights)

6260–00–106–7478 (4"–Green)

6260–01–230–8601 (6"–Red–HI)

6260–01–074–4229 (6"–Green)

6260–01–074–4230 (6"–Yellow–HI)

6260–01–178–5559 (6"–Red)

6260–01–178–5560 (6"–Blue)

6260–01–195–9753 (6"–Orange)

6260–01–196–0136 (6"–Yellow)

6260–01–218–5146 (6"–White)

6260–01–247–0362 (15"–Green)

6260–01–247–0363 (6"–Orange/Ultra HI)

6260–01–247–0367 (15"–White)

6260–01–247–0368 (6"–White–HI)

6260–01–265–0612 (15"–Red)

6260–01–265–0613 (15"–Yellow)

6260–01–265–0614 (15"–Blue)

6260–01–282–7630 (4"–Orange)

*NPA:* L.C. Industries for the Blind, Inc., Durham, North Carolina.

*Contract Activity:* Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

#### Services

*Service Type/Location:* Base Supply Center, Buildings 1304 and 1305, Fort Rucker, Alabama.

*NPA:* Alabama Industries for the Blind, Talladega, Alabama.

*Contract Activity:* Department of the Army, Directorate of Contracting, Fort Rucker, Alabama.

*Service Type/Location:* Custodial Services, USDA, Laboratory Research Building, 6301 W. 750 North, West Lafayette, Indiana.

*NPA:* Wabash Center, Inc., Lafayette, Indiana.

*Contract Activity:* USDA, Agriculture Research Service, Peoria, Illinois.

*Service Type/Location:* Food Service and Food Service Attendant, 131st Fighter Wing (Air National Guard Unit—Lambert Air Base), St. Louis, Missouri.

*NPA:* Challenge Unlimited, Inc., Alton, Illinois.

*Contract Activity:* Missouri Air National Guard, Bridgeton, Missouri.

*Service Type/Location:* Housekeeping Services, Camp Edwards Billeting, Camp Edwards, Massachusetts.

*NPA:* Nauset, Inc., Hyannis, Massachusetts.

*Contract Activity:* Massachusetts Army National Guard, Camp Edwards, Massachusetts.

#### Patrick Rowe,

*Deputy Executive Director.*

[FR Doc. 04–23176 Filed 10–14–04; 8:45 am]

**BILLING CODE 6353–01–P**

## BROADCASTING BOARD OF GOVERNORS

### Sunshine Act Meeting

**DATE AND TIME:** October 19, 2004 2 p.m.–4:30 p.m.

**PLACE:** RFE/RL Broadcast Center, Room 546, Prague, Czech Republic.

**CLOSED MEETING:** The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of

which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)). In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6)).

#### CONTACT PERSON FOR MORE INFORMATION:

Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 203–4545.

Dated: October 12, 2004.

**Carol Booker,**

*Legal Counsel.*

[FR Doc. 04–23208 Filed 10–13–04; 9:45 am]

**BILLING CODE 8230–01–M**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–570–851, A–533–813]

### Certain Preserved Mushrooms From the People's Republic of China and India: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* October 15, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Cindy Robinson at (202) 482–3797, or Amber Musser at (202) 482–1777 (PRC), and David J. Goldberger at (202) 482–4136, or Kate Johnson at (202) 482–4929 (India), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

**SUMMARY:** The Department of Commerce is extending the time limit for the preliminary results of the fifth administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China and the fifth administrative review of the antidumping duty order on certain preserved mushrooms from India, which cover the period February 1, 2003 through January 31, 2004.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further

provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

The Department finds that it is not practicable to complete the preliminary results in the administrative review of certain preserved mushrooms from the People's Republic of China as well as the administrative review of certain preserved mushrooms from India within this time limit. We find that additional time is needed in order to fully analyze the questionnaire responses submitted by respondents and conduct possible verifications of these administrative reviews.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time for completion of the preliminary results of these reviews until February 28, 2005.

Dated: October 5, 2004.

**Jeffrey May,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E4-2661 Filed 10-14-04; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Office of Manufacturing; Roundtable on the 3Rs Initiative (Reduce Waste, Reuse and Recycle); Notice of Request for Written Comments

On October 14, 2004, the U.S. Department of Commerce and the Office of Manufacturing hosted an outreach meeting to discuss the 3Rs Initiative (Reduce waste, Reuse and Recycle) that was introduced by the Government of Japan and supported by the U.S. at the 2004 G8 summit in Sea Island, Georgia. The following objectives for the Initiative were established by the G-8 nations:

(1) Reduce waste, reuse and recycle resources and products to the extent feasible;

(2) Reduce barriers to the international flow of goods and materials for recycling and remanufacturing, recycled and remanufactured products, and cleaner, more efficient technologies, consistent with existing environmental and trade obligations and frameworks;

(3) Encourage cooperation among various stakeholders (central governments, local governments, the private sector, NGOs and communities), including voluntary and market-based activities;

(4) Promote science and technology suitable for 3Rs; and

(5) Cooperate with developing countries in such areas as capacity building, raising public awareness, human resource development and implementation of recycling projects.

It was further agreed at Sea Island that Japan would host a Ministerial level conference on the Initiative. This has been scheduled by the Government of Japan for April 28-30, 2005 in Tokyo. The White House Council on Environmental Quality (CEQ) is leading an interagency effort to determine what the United States shall attempt to accomplish through the 3Rs Initiative and the policy approaches for the Ministerial Conference. Joseph H. Bogosian, the Deputy Assistant Secretary for Manufacturing at the U.S. Department of Commerce, hosted the 3Rs meeting on October 14th in order to solicit input from all interested stakeholders including representatives of manufacturers, retailers, recyclers, and environmental organizations. Further written comments or input from interested stakeholders may be submitted to [3RsInitiative@mail.doc.gov](mailto:3RsInitiative@mail.doc.gov) no later than October 29th, 2004. Please include your name, phone number, and organization affiliation.

#### FOR FURTHER INFORMATION CONTACT:

Sarah E. Aker, Office of the Deputy Assistant Secretary for Manufacturing, Department of Commerce, Room 2132, 1401 Constitution Avenue NW., Washington, DC 20230 (Phone: (202) 482-4073).

Dated: October 13, 2004.

**Sarah E. Aker,**

*Special Assistant.*

[FR Doc. 04-23282 Filed 10-14-04; 8:45 am]

BILLING CODE 3510-DR-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### North American Free-Trade Agreement (NAFTA), Article 1904 NAFTA Panel Reviews; Decision of the Committee

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of completion of extraordinary challenge.

**SUMMARY:** On October 7, 2004 the Extraordinary Challenge Committee (ECC) issued its decision in the matter of Pure Magnesium from Canada, Secretariat File No. ECC-2003-1904-01USA.

#### FOR FURTHER INFORMATION CONTACT:

Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was conducted in accordance with these Rules.

#### Background Information

On September 24, 2003, the Office of the United States Trade Representative filed a Request for an Extraordinary Challenge Committee to review decisions as stated above with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Committee review was requested of the full sunset review of the antidumping duty order made by the International Trade Administration, respecting Pure Magnesium From Canada. These determinations were published in the **Federal Register**. The NAFTA Secretariat assigned Secretariat File Number ECC-2003-1904-01USA to this request.

#### Committee Decision

The Committee concluded that the panel manifestly exceeded its powers by failing to apply the correct standard of review; such action materially affected the Panel's decision, but; that the Panel's action did not threaten the integrity of the binational panel review process.

Accordingly the challenge is dismissed and by virtue of section 3 of NAFTA Annex 1904.13 the challenged panel decision stands affirmed.

The Committee Members are hereby discharged from their duties effective October 15, 2004.

Dated: October 12, 2004.

**Caratina L. Alston,**

*United States Secretary, NAFTA Secretariat.*

[FR Doc. E4-2658 Filed 10-14-04; 8:45 am]

**BILLING CODE 3510-GT-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### North American Free-Trade Agreement (NAFTA), Article 1904 NAFTA Panel Reviews; Decision of the Committee

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of decision of Extraordinary Challenge Committee.

**SUMMARY:** On October 7, 2004 the Extraordinary Challenge Committee (ECC) issued its decision in the matter of Pure Magnesium from Canada, Secretariat File No. ECC-2003-1904-01USA.

**FOR FURTHER INFORMATION CONTACT:**

Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482-5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was conducted in accordance with these Rules.

*Background Information:* On September 24, 2003, the Office of the United States Trade Representative filed

a Request for an Extraordinary Challenge Committee to review decisions of March 27, 2002; October 15, 2002; April 28, 2003 and June 24, 2003, with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the full sunset review of the anti-dumping order made by the International Trade Administration, respecting Pure Alloy Magnesium from Canada. These determinations were published in the **Federal Register**. The NAFTA Secretariat assigned Secretariat File Number ECC-2003-1904-01USA to this request.

*Committee Decision:* The Committee concluded that the panel manifestly exceeded its powers by failing to apply the correct standard of review; such action materially affected the Panel's decision, but; that the Panel's action did not threaten the integrity of the binational panel review process.

Accordingly the challenge is dismissed and by virtue of section 3 of NAFTA Annex 1904.13 the challenged panel decision stands affirmed.

Dated: October 8, 2004.

**Caratina L. Alston,**

*United States Secretary, NAFTA Secretariat.*

[FR Doc. E4-2706 Filed 10-14-04; 8:45 am]

**BILLING CODE 3510-GT-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management, National Ocean Service, Commerce.

**ACTION:** Notice of intent to evaluate and notice of availability of final findings.

**SUMMARY:** The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Mississippi Coastal Management Program; the Sapelo Island National Estuarine Research Reserve, Georgia; and the North Carolina National Estuarine Research Reserve.

The Coastal Zone Management Program evaluation will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) and regulations at 15 CFR part 923, subpart L. The National Estuarine Research Reserve evaluations

will be conducted pursuant to sections 312 and 315 of the CZMA and regulations at 15 CFR part 921, subpart E and part 923, subpart L.

The CZMA requires continuing review of the performance of states with respect to coastal program implementation. Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserves requires findings concerning the extent to which a state has met the national objectives, adhered to its Coastal Management Program document or Reserve final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, state and local agencies and members of the public. Public meetings will be held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of the public meetings during the site visits.

The Mississippi Coastal Management Program evaluation site visit will be held December 6-10, 2004. One public meeting will be held during the week. The public meeting will be on Monday, December 6, 2004, at 5 p.m., at the Mississippi Department of Marine Resources Auditorium, 1141 Bay View Avenue, Biloxi, Mississippi.

The Sapelo Island National Estuarine Research Reserve, Georgia, evaluation site visit will be held December 14-16, 2004. One public meeting will be held during the week. The public meeting will be held on Wednesday, December 15, 2004, at 7 p.m., at the Sapelo Island Visitor Center, Landing Road/Route 1, Meridian, Georgia.

The North Carolina National Estuarine Research Reserve evaluation site visit will be held December 6-10, 2004. Three public meetings will be held during the week. The first public meeting will be held on Tuesday, December 7, 2004, at 7 p.m. at the Currituck County Library—Corolla Branch, 1123 Ocean Trail, Corolla, North Carolina. The second public meeting will be held on Wednesday, December 8, 2004, at 7 p.m. at the C-MAST Building, third floor Library Conference Room, 303 College Circle, Morehead City, North Carolina. The third public meeting will be held on Thursday, December 9, 2004, at 7 p.m. at the North Carolina Department of Environment and Natural Resources Regional Office, Room 200, 127 Cardinal Drive Ext., Wilmington, North Carolina.

Copies of states' most recent performance reports, as well as OCRM's notifications and supplemental request letters to the state, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the last public meeting held for that Program. Please direct written comments to Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland 20910. When the evaluations are completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

Notice is hereby given of the availability of the final evaluation findings for the Virginia and New York Coastal Management Programs (CMPs); and the Old Woman Creek (Ohio) and Jacques Cousteau (New Jersey) National Estuarine Research Reserves (NERRs). Sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended, require a continuing review of the performance of coastal states with respect to approval of CMPs and the operation and management of NERRs.

The states of Virginia and New York were found to be implementing and enforcing their federally approved coastal management programs, addressing the national coastal management objectives identified in CZMA Section 303(2)(A)–(K), and adhering to the programmatic terms of their financial assistance awards. Old Woman Creek (Ohio) and Jacques Cousteau (New Jersey) NERRs were found to be adhering to programmatic requirements of the NERR System.

Copies of these final evaluation findings may be obtained upon written request from: Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland 20910, or [Ralph.Cantral@noaa.gov](mailto:Ralph.Cantral@noaa.gov), (301) 713–3155, extension 118.

**FOR FURTHER INFORMATION CONTACT:** Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland 20910, (301) 713–3155, extension 118.

Dated: September 27, 2004.

**Eldon Hout,**

*Director, Office of Ocean and Coastal Resource Management.*

[FR Doc. 04–23164 Filed 10–14–04; 8:45 am]

**BILLING CODE 3510–08–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Notice of Availability of the Final Reserve Operations Plan for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

**AGENCY:** National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) announces the availability of the Final Reserve Operations Plan for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve). The Reserve Operations Plan (ROP) is a requirement of Executive Order 13178, as finalized by Executive Order 13196 (hereinafter Executive Order or EO). The ROP was presented to the public on two separate occasions in 2002 and 2004, and over 30,000 public comments resulted from both open public comment periods.

The most recent public comment period for the ROP opened on March 19, 2004 (69 FR 13022) and ended on May 15, 2004. Approximately 29,400 public comments were received during this period, with about 27,000 arriving by e-mail and the remainder by letter and fax. In addition, the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council provided both general and specific comments on the draft final ROP as did the Marine Mammal Commission, Western Pacific Regional Fisheries Management Council and a group of 13 local and national conservation organizations, claiming to represent over 3.4 million members. A similar letter was also received from a group of 10 conservation organizations (many of the same as above), collectively representing more than 2.7 million members.

**FOR FURTHER INFORMATION CONTACT:** Robert P. Smith, (808) 933–8181, [nwhi@noaa.gov](mailto:nwhi@noaa.gov).

*To Obtain a Hard Copy of the Final Reserve Operations Plan:* Requests can be mailed to NWHI Coral Reef Ecosystem Reserve, 6700 Kalanianaʻole

Highway, #215, Honolulu, Hawaii 96825; faxed to (808) 397–2662; e-mailed to [nwhi@noaa.gov](mailto:nwhi@noaa.gov) or downloaded at <http://www.hawaiiireef.noaa.gov>.

**SUPPLEMENTARY INFORMATION:** The Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve) was established by Executive Orders 13178 and 13196. Pursuant to the EO, NOAA prepared a draft Reserve Operations Plan that was issued for public review in February 2002 (67 FR 11998), which provided a guide for management of the Reserve during a process that will consider the marine environment of the Northwestern Hawaiian Islands for designation as a National Marine Sanctuary. Significant public comment was received on the first draft, and the NMSP considered the public comment and worked with the Reserve Advisory Council to produce a second draft Reserve Operations Plan. A second public review period was conducted from March 19 through May 15, 2004 and over 29,000 comments were received.

#### Comments and Responses

From all of the public comments received, a number of comments were accepted by NOAA which corrected technical inaccuracies and/or added additional clarifying information as improvements to the ROP, and were incorporated into the final document, either verbatim as suggested, or addressed by explanation. An example of a comment received and accepted which addressed a technical inaccuracy was “The correct Latin name for killer whale is ‘*Orcinus*’ and should replace ‘*Orsinus*’”. Significant comments to the ROP are generally described below, with NOAA’s responses.

1. *Comment:* NOAA should, through the Department of Commerce, carry out formal regulations for the Executive Orders that would be enforceable within the Reserve.

*Response:* The NMSP will not pursue the issuance of any additional regulations for the Reserve. The NMSP’s priority is to finalize the ROP and focus on the sanctuary designation process, which will include the development of regulations for the preferred alternative, rather than undertake a resource-intensive, concurrent process to issue regulations for the Reserve.

2. *Comment:* The ROP should include a penalty schedule for violation of all Reserve prohibitions.

*Response:* Executive Orders 13178 and 13196, which established the Reserve, provide specific conservation measures that apply to the Reserve.

Most of these measures are self-executing and need no additional action on the part of the NMSP. Remedies applicable to violations will depend on the circumstances of the particular case. Further, the National Marine Sanctuaries Amendments Act of 2000 does not contain a provision for assessing penalties. As such, the National Marine Sanctuary Program has determined it is not necessary to list a schedule of penalties for the Reserve.

3. *Comment:* The ROP fails to provide specific plans and actions on how to recover endangered and threatened species within the Reserve.

*Response:* Actions needed for the recovery of species listed as endangered or threatened under the Endangered Species Act of 1973, as amended, are addressed in formal Recovery Plans. Recovery Plans for most terrestrial species are written and carried out under the authority of the U.S. Department of the Interior, Fish and Wildlife Service. Similarly, Recovery Plans for most species of marine mammals are prepared and implemented under the authority of the U.S. Department of Commerce, National Marine Fisheries Service. In some instances where species rely on both the land and the ocean for essential life stages (such as with sea turtles and monk seals in the NWHI), the Recovery Plans are jointly written by the agencies, and recovery actions are shared. Copies of Recovery Plans pertaining to threatened and endangered species within the Northwestern Hawaiian Islands may be obtained by contacting the offices of the agencies mentioned above. The Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, through cooperative interagency efforts described in the Reserve Operations Plan, will coordinate and assist either responsible agency in the Northwestern Hawaiian Islands.

4. *Comment:* The Reserve should implement mandatory access permits and a mandatory access notification system.

*Response:* The Reserve manager currently reviews requests for permits pertaining to activities proposed in the Reserve that are otherwise prohibited by the Executive Order. However, a mandatory access notification system is not mandated by the EO and thus is not a requirement for the ROP.

5. *Comment:* The ROP should constitute the "No Action" alternative for any sanctuary designation proposal. The Executive Summary should be expanded to note that the ROP establishes a Reserve management framework that will remain in place until modified or replaced by a

management program that incorporates provisions of the Executive Orders in an approved sanctuary decision.

*Response:* A statement regarding the ROP as a "No Action" alternative has been added to the ROP. However, the NMSP does not agree with the portion of the comment which suggests that the ROP and provisions of the EO be approved as part of a sanctuary decision, as this is speculative and premature relative to the process mandated by the National Marine Sanctuaries Act and the National Environmental Policy Act.

6. *Comment:* Clearly some of the responsibilities related to enforcement in the NWHI reside with other parts of NOAA or with other federal agencies. Including such high costs for enforcement in the draft ROP greatly inflates the estimate of total funding required for maintaining and operating the Reserve.

*Response:* An enforcement workshop effort took place in May and June of 2004 to gather knowledge and exchange ideas among multiple federal and state agencies with the intent to develop a unified approach to surveillance and monitoring in the NWHI. The cost of surveillance and monitoring of the Reserve or who will bear the costs have yet to be determined. The enforcement costs in the draft ROP are the best projections at this point in time.

7. *Comment:* NOAA's marine debris cleanup efforts should focus on areas that pose a high risk of monk seal entanglement (*i.e.*, adjacent to places where monk seal pups are born and where young seals may learn to swim and feed). Given the magnitude of the debris problem and the length of time that will likely be required to adequately cleanup the entire region, the Marine Mammal Commission continues to believe that it is necessary to prioritize areas for clean up. Therefore, the ROP should indicate the highest priority need is to remove debris from areas of particular importance to monk seals.

*Response:* The Desired Outcome of the Marine Debris Action Plan of the ROP was expanded to read "To reduce threats by marine debris to natural resources in the Reserve and neighboring waters with an emphasis on preventing endangered species entanglement." The following statement was also added "Areas identified as most important for marine debris removal should be consistent with endangered species recovery efforts, such as monk seal recovery."

8. *Comment:* The ROP does not contain enough background information on the four fisheries (lobster, pelagic

species, bottomfish, and precious coral) undertaken or proposed in recent years in the NWHI. This lack of information on current NWHI stocks, allowable fishing levels, and efforts to manage these fisheries stands in sharp contrast to the more detailed discussions of other resources such as cultural and historic resources. Its brevity is inappropriate given the major focus on fishery management needs and measures in the Executive Orders. The discussion should be expanded and included in a separate action plan on fisheries.

*Response:* The NMSP believes the ROP contains adequate descriptions of fisheries for the purposes of implementing the Executive Order. Sanctuary designation requires an Environmental Impact Statement (EIS). The EIS will contain detailed background information on the relevant fisheries, will include a thorough analysis of issues associated with fishing activities, and will also assess management implications to fishing activities.

9. *Comment:* The ROP should implement a mandatory domestic Vessel Monitoring System (VMS).

*Response:* The Executive Order does not state that a vessel monitoring system be mandatory; rather it directs the ROP to consider the use of VMS, if warranted (see Sec 5(b)(10) of EO 13178).

### Reserve Operations Plan

The EO directs that the ROP shall be directed at priority issues and actions. The EO also directs that the ROP should address such issues as coordinated management among the agencies with relevant jurisdiction in the Northwestern Hawaiian Islands, clean up and prevention of marine debris, restoration of degraded or injured resources, research and education, enforcement and surveillance, identification and coordination with Native Hawaiian interests on cultural uses and locations, and designation of the Reserve as a National Marine Sanctuary.

The NMSP prepared the revised draft Reserve Operations Plan, following templates used for the management plans of the National Marine Sanctuary Program. The document is composed of a set of function- and issue-oriented action plans (as typically identified in the Executive Order), with supporting documentation. Each action plan focuses on strategies, and outlines what, who, why, when, and how different activities will be conducted. Following is a list of the action plans contained in the final Reserve Operations Plan:

- Operations: includes interagency coordination, activity and area



identification, Reserve/Sanctuary Advisory Council operations, development of fishing caps and permitting procedures, and infrastructure development;

- Education: encompasses all education, outreach, and interpretive projects;
- Native Hawaiian Cultural Resources: consists of all projects related to Native Hawaiian culture, uses, and locations;
- Maritime Heritage: contains projects related to maritime historic resources;
- Research and Monitoring: contains all projects related to research and monitoring;
- Mapping: covers all projects related to developing nautical charts and maps of the NWHI;
- Response, Damage Assessment, and Restoration: contains projects related to contingency planning, response, and restoration;
- Marine Debris: consists of projects related to the removal of marine debris from the NWHI;
- Enforcement: includes air and sea support for existing enforcement operations and expansion of a vessel monitoring system; and
- Designation: comprised of all projects related to the Sanctuary designation process.

The ROP provides a guide for management of the Reserve during the time necessary to consider the Northwestern Hawaiian Islands for designation as a National Marine Sanctuary. The designation process is currently underway (January 19, 2001, 66 FR 5509).

**Authority:** Pub. L. 106–513; Executive Order 13178; and Executive Order 13196.

Dated: October 7, 2004.

**Richard W. Spinrad,**

*Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.*

[FR Doc. 04–23165 Filed 10–14–04; 8:45 am]

**BILLING CODE 3510–NK–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Public Comment for Enhancement of the Initial Integrated Ocean Observing System (IOOS)

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), DOC.

**ACTION:** Notice of opportunity for written public comment.

**SUMMARY:** This notice announces the opportunity for the public to comment

on the First Annual Integrated Ocean Observing System (IOOS) Development Plan, available on October 15, 2004 at [www.ocean.us](http://www.ocean.us). Comments are due not later than close of business on Monday, November 1, 2004 and should be submitted via e-mail to [k.stump@ocean.us](mailto:k.stump@ocean.us) or in writing to Ms. Kristine Stump; Ocean.US; 2300 Clarendon Boulevard, Suite 1350; Arlington, VA 22201.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding this Notice, please contact Ms. Kristine Stump, Ocean.US Telephone: (703) 588–0855. E-mail: [k.stump@ocean.us](mailto:k.stump@ocean.us).

**SUPPLEMENTARY INFORMATION:** Ocean.US is the national office for the integrated and sustained ocean observing system. Ocean.US has conducted several workshops and has completed a draft of the preliminary First Annual IOOS Development Plan, which, along with reports of the workshops, can be reviewed at [www.ocean.us](http://www.ocean.us). IOOS will be a sustained network of sensors on buoys, ships, satellites, underwater vehicles, and other platforms that routinely supply the data and information needed for rapid detection and timely predictions of changes in our nation's coastal waters and on the high seas. An initial IOOS consisting of existing systems has been identified, and needs for enhancements have been submitted by stakeholders. The First Annual IOOS Implementation Conference, convened August 31–September 2, 2004, allowed stakeholders to review and prioritize IOOS enhancements. Results of the conference may be obtained by contacting Ms. Kristine Stump ([k.stump@ocean.us](mailto:k.stump@ocean.us)).

Dated: October 8, 2004.

**Richard W. Spinrad,**

*Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.*

[FR Doc. 04–23163 Filed 10–14–04; 8:45 am]

**BILLING CODE 3510–JE–M**

### COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

#### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

October 8, 2004.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

**EFFECTIVE DATE:** October 15, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at <http://www.cbp.gov>. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at <http://otexa.ita.doc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 340/640 is being increased for swing, reducing the limit for Category 341 to account for the swing being applied to Categories 340/640.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 59915, published on October 20, 2003.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

#### Committee for the Implementation of Textile Agreements

October 8, 2004.

Commissioner,  
Bureau of Customs and Border Protection,  
Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 14, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on October 15, 2004, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit <sup>1</sup>
340/640 .....	6,460,573 dozen.



Category	Adjusted twelve-month limit <sup>1</sup>
341 .....	4,662,027 dozen.

<sup>1</sup> The limits have not been adjusted to account for any imports exported after December 31, 2003.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,  
D. Michael Hutchinson,  
*Acting Chairman, Committee for the Implementation of Textile Agreements.*  
[FR Doc. E4-2659 Filed 10-14-04; 8:45 am]

BILLING CODE 3510-DR-S

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Malaysia

October 8, 2004.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

**EFFECTIVE DATE:** October 15, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 344-2650, or refer to the Bureau of Customs and Border Protection Web site at <http://www.cbp.gov>. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at <http://otexa.ita.doc.gov>.

## SUPPLEMENTARY INFORMATION:

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 435 is being increased for swing, reducing the limit for Category 442 to account for the swing being applied to Category 435.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 59921, published on October 20, 2003.

D. Michael Hutchinson,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

Committee for the Implementation of Textile Agreements

October 8, 2004.

Commissioner,  
*Bureau of Customs and Border Protection,*  
*Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 14, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on October 15, 2004, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit <sup>1</sup>
435 .....	20,093 dozen.

Category	Adjusted twelve-month limit <sup>1</sup>
442 .....	17,167 dozen.

<sup>1</sup> The limits have not been adjusted to account for any imports exported after December 31, 2003.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,  
D. Michael Hutchinson,  
*Acting Chairman, Committee for the Implementation of Textile Agreements.*  
[FR Doc. E4-2660 Filed 10-14-04; 8:45 am]

BILLING CODE 3510-DR-S

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Transmittal No. 05-11]

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/OPS-ADMIN, (703) 604-6575

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 05-11 with attached transmittal, policy justification, Sensitivity of Technology, and Section 620C(d).

Dated: October 8, 2004.

L.M. Bynum,  
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5001-06-M



## DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

7 OCT 2004

**In reply refer to:  
I-04/008406**

**The Honorable J. Dennis Hastert  
Speaker of the House of Representatives  
Washington, D.C. 20515-6501**

**Dear Mr. Speaker:**

**Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 05-11, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Turkey for defense articles and services estimated to cost \$96 million. Soon after this letter is delivered to your office, we plan to notify the news media.**

**You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.**

**Sincerely,**

A handwritten signature in cursive script, reading "Richard J. Millies", is positioned above the printed name and title.

**Richard J. Millies  
Deputy Director**

**Enclosures:**

- 1. Transmittal No. 05-11**
- 2. Policy Justification**
- 3. Sensitivity of Technology**
- 4. Section 620C(d)**

**Same ltr to: House Committee on International Relations  
Senate Committee on Foreign Relations  
House Committee on Armed Services  
Senate Committee on Armed Services  
House Committee on Appropriations  
Senate Committee on Appropriations**

## Transmittal No. 05-11

**Notice of Proposed Issuance of Letter of Offer  
Pursuant to Section 36(b)(1)  
of the Arms Export Control Act**

- (i) **Prospective Purchaser:** Turkey
- (ii) **Total Estimated Value:**
- |                          |                     |
|--------------------------|---------------------|
| Major Defense Equipment* | \$68 million        |
| Other                    | <u>\$28 million</u> |
| TOTAL                    | \$96 million        |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 225 AIM-9X SIDEWINDER Missiles, 5 AIM-9X Dummy Air Training Missiles, 20 AIM-9X Captive Air Training Missiles, missile containers, missile modifications, test sets and support equipment, spare and repair parts, publications and technical data, maintenance, personnel training and training equipment, U.S. Government and contractor representatives, contractor engineering and technical support services, and other related elements of logistics support.
- (iv) **Military Department:** Navy (AHX)
- (v) **Prior Related Cases, if any:**
- FMS case AGS - \$30 million - 15Nov94  
FMS case AGC - \$18 million - 02Nov92  
FMS case AFV - \$16 million - 16Jan91
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached
- (viii) **Date Report Delivered to Congress:** 7 OCT 2004

\* as defined in Section 47(6) of the Arms Export Control Act.

## **POLICY JUSTIFICATION**

### **Turkey – AIM-9X SIDEWINDER Missiles**

The Government of Turkey has requested a possible sale of 225 AIM-9X SIDEWINDER Missiles, 5 AIM-9X Dummy Air Training Missiles, 20 AIM-9X Captive Air Training Missiles, missile containers, missile modifications, test sets and support equipment, spare and repair parts, publications and technical data, maintenance, personnel training and training equipment, U.S. Government and contractor representatives, contractor engineering and technical support services, and other related elements of logistics support. The estimated cost is \$96 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Turkey and further weapon system standardization and interoperability with U.S. forces.

The proposed sale of the AIM-9X SIDEWINDER missile systems is being addressed in conjunction with the planned modernization of their F-16 fighter aircraft. The missiles will significantly enhance the Air Force's current air-to-air intercept capability to equal capabilities within their region of operations. The Turkish Air Force has extensive experience operating the AIM-9M missile system with their F-16 aircraft and should have no difficulties incorporating this proposed upgraded weapon system into their forces. The missiles will be provided in accordance with, and subject to the limitation on use and transfer provided under the Arms Export Control Act, as amended, as embodied in the Letter of Offer and Acceptance. This proposed sale will improve Turkey's capacity to contribute to NATO operations and the Global War on Terrorism.

The proposed sale will not affect the basic military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus questions.

The prime contractor will be Raytheon Systems Corporation of Tucson, Arizona. Although generally the purchaser requires offsets, at this time, there are no known offset agreements proposed in connection with this potential sale.

There will be up to three U.S. Government and contractor representatives on a temporary basis for in-country training over the life of the missile systems.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

## Transmittal No. 05-11

**Notice of Proposed Issuance of Letter of Offer  
Pursuant to Section 36(b)(1)  
of the Arms Export Control Act**

**Annex  
Item No. vii**

**(vii) Sensitivity of Technology:**

1. The AIM-9X represents a substantial increase in missile acquisition and kinematics performance over the AIM-9M. The missile includes a high off-bore-sight seeker, enhanced countermeasure rejection capability, low drag/high angle of attack airframe and the ability to integrate the Helmet Mounted Cueing System. The software algorithms are the most sensitive portions of the AIM-9X missile. The software continues to be modified during the testing phase in order to improve its counter-countermeasures capabilities. No software source code or algorithms will be released. Sensitive and/or classified (up to Secret) elements of the AIM-9X missiles include equipment/hardware, software, training, maintenance, documentation, and operation/performance.

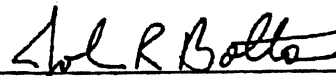
2. The external view of the AIM-9X SIDEWINDER missile is Unclassified and not sensitive. The AIM-9X features a high off-bore-sight seeker, enhanced countermeasure rejection capability, improved acquisition range and the ability to integrate with aircraft sensors. The seeker/guidance and control section and the target detector are Confidential and contain sensitive state-of-the-art technology. Specifically, the infrared seeker sensitivity is a significant improvement over the previous AIM-9 variants. Manuals and technical documents for the AIM-9X that are necessary or support operational use and organizational maintenance have portions classified up to Secret. Performance and operating logic of the counter-countermeasures circuits are Secret. The hardware, software, and data identified are classified to protect vulnerabilities, design and performance parameters and similar critical information.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

**CERTIFICATION UNDER § 620C(D)**  
**OF THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED**

Pursuant to § 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (§ 1-100) and State Department Delegation of Authority No. 145 (§ 1(a)(1)), I hereby certify that the furnishing to Turkey of 225 AIM-9X SIDEWINDER Missiles, five AIM-9X Dummy Air Training Missiles, 20 AIM-9X Captive Air Training Missiles, missile containers, missile modifications, test sets and support equipment, spare and repair parts, publications and technical data, maintenance, personnel training and training equipment, U.S. Government and contractor representatives, contractor engineering and technical support services, and other related elements of logistics support is consistent with the principles contained in § 620C(b) of the Act.

This certification will be made part of the notification to Congress under § 36(b) of the Arms Export Control Act, as amended, regarding the proposed sale of the above-named articles and services and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.



John R. Bolton  
Under Secretary of State  
for Arms Control and  
International Security

[FR Doc. 04-23118 Filed 10-14-04; 8:45 am]

BILLING CODE 5001-06-C

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

[Transmittal No. 05-12]

**36(b)(1) Arms Sales Notification**

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/OPS-ADMIN, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 05-12 with attached transmittal, policy justification, Sensitivity of Technology, and Section 620C(d).

Dated: October 8, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5001-06-M



## DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

7 OCT 2004  
In reply refer to:  
I-04/008873

The Honorable J. Dennis Hastert  
Speaker of the House of Representatives  
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 05-12, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Turkey for defense articles and services estimated to cost \$3.888 billion. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

A handwritten signature in cursive script, reading "Richard J. Millies", is positioned above the printed name and title.

Richard J. Millies  
Deputy Director

**Enclosures:**

1. Transmittal No. 05-12
2. Policy Justification
3. Sensitivity of Technology
4. Section 620C(d)

Same ltr to: House Committee on International Relations  
Senate Committee on Foreign Relations  
House Committee on Armed Services  
Senate Committee on Armed Services  
House Committee on Appropriations  
Senate Committee on Appropriations

## Transmittal No. 05-12

**Notice of Proposed Issuance of Letter of Offer  
Pursuant to Section 36(b)(1)  
of the Arms Export Control Act**

**(i) Prospective Purchaser: Turkey****(ii) Total Estimated Value:**

Major Defense Equipment*	\$ .652 billion
Other	<u>\$3.236 billion</u>
<b>TOTAL</b>	<b>\$3.888 billion</b>

**(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: the modernization of 218 F-16 aircraft. This proposed sale will modify 104 F-16 Block 40, 76 F-16 Block 50 and 38 F-16 Block 30 aircraft. The proposed sale will include the following MDE items for integration and testing:**

180 AN/APG-68(V)9 radars;  
 7 full mission trainers for upgrade/replacement;  
 200 Joint Helmet Mounted Cueing Systems (JHMCS);  
 200 AN/AVS-9 Night Vision Goggles (NVG);  
 4 AGM-84H Joint Standoff Land Attack Missile-Expanded Response (SLAM-ER);  
 4 AGM-84 HARPOON missiles;  
 6 AIM-120C Advanced Medium Range Air-to-Air Missiles (AMRAAM);  
 4 drones (aerial targets);  
 1 AGM-154B Joint Standoff Weapon (JSOW);  
 1 AGM-154A JSOW;  
 2 AIM-9X SIDEWINDER missiles;  
 2 CBU-103 Cluster Bomb Units with Wind Corrected Munitions Dispenser (WCMD);  
 2 CBU-105 Sensor Fused Weapon with WCMD;  
 1 AGM-88B High-Speed Anti-Radiation Missiles (HARM); and  
 2 AN/ASQ-213 HARM Targeting System (export) (HTS(E)).

The proposed upgraded capabilities will include integration of the Modular Mission Computer, AN/APG-68(V)9, JHMCS, AN/AVS-9, Link-16, Self-Protection Electronic Warfare Suite (SPEWS II), HTS(E), export versions of weapons available on F-16s, plus five additional foreign weapon systems: Infra-Red Improved SIDEWINDER-TVC (IRIS-T) (Germany) and PENGUIN (Norway), PYTHON-5 (Israel), DERBY (Israel), and SPICE (Israel). Also included are system integration and testing, missile modifications, software development/integration, test sets and support equipment, spare and repair parts, publications and technical data, maintenance, personnel training and training equipment, U.S. Government and contractor representatives, contractor engineering and technical support services, and other related elements of logistics support.

\* as defined in Section 47(6) of the Arms Export Control Act.



- (iv) **Military Department:** Air Force (NCU)
- (v) **Prior Related Cases, if any:**
  - FMS case NCE - \$ 162 million - 26Mar92
  - FMS case SLA - \$2,343 million - 26Mar92
  - FMS case SFA - \$3,270 million - 09Dec83
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached
- (viii) **Date Report Delivered to Congress:** 7 OCT 2004

## **POLICY JUSTIFICATION**

### **Turkey – F-16 Modernization Program**

The Government of Turkey has requested a possible sale for the modernization of 218 F-16 aircraft. This proposed sale will modify 104 F-16 Block 40, 76 F-16 Block 50 and 38 F-16 Block 30 aircraft. The proposed sale will include the following MDE items for integration and testing:

- 180 AN/APG-68(V)9 radars;
- 7 full mission trainers for upgrade/replacement;
- 200 Joint Helmet Mounted Cueing Systems (JHMCS);
- 200 AN/AVS-9 Night Vision Goggles (NVG);
- 4 AGM-84H Joint Standoff Land Attack Missile-Expanded Response (SLAM-ER);
- 4 AGM-84 HARPOON missiles;
- 6 AIM-120C Advanced Medium Range Air-to-Air Missiles (AMRAAM);
- 4 drones (aerial targets);
- 1 AGM-154B Joint Standoff Weapon (JSOW);
- 1 AGM-154A JSOW;
- 2 AIM-9X SIDEWINDER missiles;
- 2 CBU-103 Cluster Bomb Units with Wind Corrected Munitions Dispenser (WCMD);
- 2 CBU-105 Sensor Fused Weapon with WCMD;
- 1 AGM-88B High-Speed Anti-Radiation Missiles (HARM);
- 2 AN/ASQ-213 HARM Targeting System (export) (HTS(E)).

The proposed upgraded capabilities will include integration of the Modular Mission Computer, AN/APG-68(V)9, JHMCS, AN/AVS-9, Link-16, Self-Protection Electronic Warfare Suite (SPEWS II), HTS(E), export versions of weapons available on F-16s, plus five additional foreign weapon systems: Infra-Red Improved SIDEWINDER-TVC (IRIS-T) (Germany) and PENGUIN (Norway), PYTHON-5 (Israel), DERBY (Israel), and SPICE (Israel). Also included are system integration and testing, missile modifications, software development/integration, test sets and support equipment, spare and repair parts, publications and technical data, maintenance, personnel training and training equipment, U.S. Government and contractor representatives, contractor engineering and technical support services, and other related elements of logistics support. The estimated cost is \$3.888 billion.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Turkey and further weapon system standardization and interoperability with U.S. forces.

This proposed modernization will enhance the Turkish Air Force's ability to defend Turkey while patrolling the nation's extensive coastline and borders against future threats and contribute to Global War on Terrorism and NATO operations. Turkey needs these capabilities for mutual defense, regional security, modernization, and U.S. and NATO interoperability. The proven reliability and compatibility of like systems integrated with numerous platforms will foster increased interoperability with NATO and U.S. forces, and expand regional defenses to counter common threats to air, border, and shipping assets in the region. The modernization of the F-16 aircraft will be provided in accordance with, and

subject to the limitation on use and transfer provided under the Arms Export Control Act, as amended, as embodied in the Letter of Offer and Acceptance.

This proposed sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus questions.

The principle contractors will be:

BAE Advanced Systems	Greenlawn, New York
Boeing Integrated Defense Systems	St Lewis, Missouri
(three locations)	Long Beach, California
	San Diego, California
Harris Corporation, Government	Melbourne, Florida
Communications Systems Division	
Lockheed Martin Aeronautics Company	Fort Worth, Texas
Lockheed Martin Missiles and Fire Control	Dallas, Texas
Northrop-Grumman Electro-Optical Systems	Garland, Texas
Northrop-Grumman Electronic Systems	Baltimore, Maryland
Raytheon Missile Systems	Tucson, Arizona

Although generally the purchaser requires offsets, at this time, there are no known offset agreements proposed in connection with this potential sale.

There will be up to three U.S. Government and contractor representatives on a temporary basis for in-country training over the life of the missile systems.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

**Transmittal No. 105-12****Notice of Proposed Issuance of Letter of Offer  
Pursuant to Section 36(b)(1)  
of the Arms Export Control Act****Classified Annex  
Item No. vii****(vii) Sensitivity of Technology:**

1. The modifications and weapons proposed in the PEACE ONYX III F-16 modernization program are, for the most part, classified. The highest level of classified information required to be released for training, operation and maintenance of the modified Block 40 and 50 F-16s and weapons associated with the PEACE ONYX III modification is Secret. The highest level that could be revealed through reverse engineering or testing of the end item, including weapons, is Secret.

2. The modified Turkey Air Force Block 40 and Block 50 aircraft will include the following classified or sensitive components and weapons:

- a. The AIM-9X SIDEWINDER missile is a supersonic, air-to-air guided missile that employs a passive infrared (IR) target acquisition system, proportional navigational guidance, a closed-loop position servo Fin Actuator Unit, and a Target Detector. It features digital technology and micro-miniature solid-state electronics. A solid-propellant Rocket Motor propels the missile. The AIM-9X is configured with an Annular Blast Fragmentation warhead controlled by an Electronic Safe-Arm Device. Jet Vane Control provides enhanced maneuverability over other variants of the AIM-9, as well as most currently fielded foreign infrared missiles, by deflecting rocket motor thrust to aid in turning. The AIM-9X All-Up Round (AUR) is Confidential; major components and subsystems range from unclassified to Confidential; and technical data and other documentation are classified up to Secret.
- b. The AGM-88B High-Speed Anti-Radiation Missiles (HARM) is a supersonic air-to-surface missile designed to seek and destroy enemy radar equipped air defense systems. HARM has a proportional guidance system that homes in on enemy radar emissions through a fixed antenna and seeker head in the missile nose. The missile consists of four sections including guidance, warhead, control section and rocket motor. The HARM AUR is classified Confidential, major components and subsystems range from unclassified up to Secret; technical and data and other documentation are classified up to Secret.
- c. The AIM-120C Advanced Medium Range Air-to-Air Missile (AMRAAM) is a supersonic, air launched, aerial intercept, guided missile featuring digital technology and micro-miniature solid-state electronics. The missile employs active radar target tracking, proportional navigation guidance, and active Radio Frequency target detection. It can be launched day or night, in any weather and increases pilot survivability by allowing the pilot to disengage after missile launch and engage other targets. AMRAAM capabilities include lookdown/shootdown, multiple launches against multiple targets, resistance to electronic countermeasures, and interception of high- and low-flying and maneuvering

targets. The AMRAAM AUR is classified Confidential, major components and subsystems range from unclassified to Confidential; and technical data and other documentation are classified up to Secret.

- d. The AGM-84 HARPOON is an all weather, over-the-horizon, anti-ship missile system. Its low-level, sea-skimming cruise trajectory, active radar guidance and warhead design assure high survivability and effectiveness. The HARPOON missile is designed as an anti-ship cruise missile. It cruises just above the water's surface toward its target and, just before impact, does a terminal pop-up maneuver to counter close-in defenses and enhance warhead penetration. The HARPOON AUR is classified Confidential; individual components (guidance, seeker, radome, warhead, and other components) are all classified Confidential; technical data and other documentation are classified up to Secret.
- e. The AGM-154A/B Joint Standoff Weapon (JSOW) is a low observable, 1000 lb. class, INS/GPS-guided, family of air-to-ground glide weapons. JSOW consists of a common airframe and avionics that provides for a modular payload assembly to attack stationary and moving massed light-armored and armored vehicle columns, surface-to-air targets and personnel. JSOW provides combat forces with all weather, day/night, multiple kills per pass, launch and leave, and standoff capability. JSOW A contains BLU-97 Combined Effects submunitions effective against light armored vehicles, soft targets and personnel and JSOW B contains BLU-108 Sensor Fuzed Weapon submunitions for use against armored vehicles or main battle tanks. The JSOW AUR is Unclassified, major components and subsystems are classified up to Secret; and technical data and other documentation are to Secret.
- f. The CBU-103 is a wide area smart munition designed to defeat fixed and moving, lightly armored land combat vehicles, personnel, and soft targets. CBU-103 consists of a Tactical Munition Dispenser (TMD) and 202 BLU-97 submunitions. These Combined effects submunitions are multi-mode to allow use against light armor in a shaped-charge mode and against soft targets, such as wood structures or personnel in a blast/fragmentation mode. The CBU-103 incorporates the Wind Corrected Munition Dispenser (WCMD) tail kit. The tail kit inertially steers the munition from a known release point to precise target coordinates while compensating for launch transients, winds aloft, surface winds, and adverse weather. The CBU-103 AUR is Unclassified; major components and subsystems are classified up to Confidential; technical data/documentation are classified up to Secret.
- g. The Sensor Fuzed Weapon (SFW) CBU-105 is a wide area smart munition designed to defeat fixed and moving land combat vehicles including main battle tanks. The SFW consists of a Tactical Munition Dispenser (TMD), SUU-66/B, and ten BLU-108 submunitions. Each submunition contains four projectile warheads, for a total of 40 submunitions per TMD. The warheads target and activate through a small infrared sensor and fire a self-forging, penetrating projectile into the target. The CBU-105 incorporates the Wind Corrected Munition Dispenser (WCMD) tail kit, nearly equivalent in function to the CBU-103 tail kit (see the WCMD description above). The SFW CBU-105 AUR is Unclassified; major components and subsystems are classified up to Confidential; and technical data and documentation are classified up to Secret.
- h. The Joint Direct Attack Munition (JDAM) is a guidance tail kit that converts unguided free-fall bombs into accurate, adverse weather "smart" munitions. With

the addition of a new tail section that contains an inertial navigational system and a global positioning system guidance control unit, JDAM improves the accuracy of unguided, general-purpose bombs in any weather condition. JDAM can be launched from very low to very high altitudes in a dive, toss and loft, or in straight and level flight with an on-axis or off-axis delivery. JDAM enables multiple weapons to be directed against single or multiple targets on a single pass. The JDAM AUR and all of its components are unclassified, technical data for JDAM is classified up to Secret.

- i. Standoff Land Attack Missile/Expanded Response (SLAM-ER) is an air-launched, day/night, adverse weather, over-the-horizon, precision strike missile. SLAM-ER provides an effective, long range, precision strike option for both pre-planned and Target of Opportunity attack missions against land and maneuvering ship targets, and other moving targets. SLAM/ER contains a highly accurate, GPS-aided guidance system; an imaging infrared seeker and two-way data link with the AWW-13 Advanced Data Link pod for Man-In-The-Loop (MITL) control; improved missile aerodynamic performance characteristics that allow both long range and flexible terminal attack profiles; and an ordnance section with good penetrating power and lethality. Advanced features on SLAM-ER include Automatic Target Acquisition (ATA). This function improves target acquisition in cluttered scenes, overcomes most IR countermeasures, and mitigates the effects of environmentally degraded conditions. The SLAM-ER AUR is classified Confidential, individual components (guidance, seeker, radome, warhead, and other components) are all classified Confidential; technical data and other documentation are classified up to Secret.
- j. The Joint Helmet Mounted Cueing System (JHMCS) is a modified HGU-55/P helmet that incorporates a visor-projected Heads-Up Display (HUD) to cue weapons and aircraft sensors to air and ground targets. In close combat, a pilot must currently align the aircraft to shoot at a target. JHMCS allows the pilot to simply look at a target to shoot. This system projects visual targeting and aircraft performance information on the back of the helmet's visor, enabling the pilot to monitor this information without interrupting his field of view through the cockpit canopy, the system uses a magnetic transmitter unit fixed to the pilot's seat and a magnetic field probe mounted on the helmet to define helmet pointing positioning. A Helmet Vehicle Interface (HVI) interacts with the aircraft system bus to provide signal generation for the helmet display. This provides significant improvement for close combat targeting and engagement. Hardware is Unclassified; technical data and documents are classified up to Secret.
- k. The HARM Targeting System (Export) (HTS(E)) is designed for Suppression of Enemy Air Defenses (SEAD). The HTS(E) provides pilots the capability to employ HARM in its most effective mode, Range Known. The pod can autonomously detect, identify and locate radar-guided threats at long ranges. It displays the target location to the pilot for AGM-88 designation and firing. The HTS(E) is fully field reprogrammable and designed for high reliability/ maintainability. HTS(E) provides a significant increase in situational awareness. AN/ASQ-213 HTS(E) hardware is classified Secret; major components and subsystems range from unclassified to Secret; technical data and documentation are classified up to Secret.
- l. The AN/APG-68(V)9 is the latest model of the APG-68 radar. This model contains the latest digital technology available for a mechanically scanned antenna, including higher processor power, higher transmission power, more sensitive

receiver electronics, and an entirely new capability, Synthetic Aperture Radar (SAR), which creates higher-resolution ground maps from a much greater distance than previous versions of the APG-68. The upgrade features a 30% increase in detection range of air targets, a five-fold increase in processing speed, a ten-fold increase in memory, as well as significant improvements in all modes, jam resistance and false alarm rates. Complete hardware is classified Confidential; major components and subsystems are classified Confidential; software is classified Secret; and technical data and documentation are classified up to Secret.

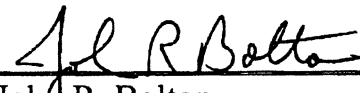
- m. The AN/AVS-9 Night Vision Goggle (NVG) is a 3rd generation aviation NVG offering higher resolution, high gain, and photo response to near infrared. Features include independent eye-span adjustment, 25-mm eye relief eyepieces which easily accommodate eyeglasses, and a low-profile battery pack. Minus-blue filter screens glare from cockpit instrument lighting; class B filter (available with some variants) can accommodate aircraft color displays. Other features include: low-distortion optics and automatic brightness control. The Night Vision Imaging System modification includes cockpit modifications to provide NVG-compatible cockpit lighting that optimizes NVG sensitivity, as well as external lighting capable of operating in a covert mode wherein only NVG-equipped personnel can see the aircraft external lighting. Hardware is Unclassified; and technical data and documentation to be provided are Unclassified.
- n. The Multifunctional Information Distribution System-Low Volume Terminal (MIDS-LVT) is an advanced Link-16 command, control, communications, and intelligence (C3I) system incorporating high-capacity, jam-resistant, digital communication links for exchange of near real-time tactical information, including both data and voice, among air, ground, and sea elements. MIDS-LVT is intended to support key theater functions such as surveillance, identification, air control, weapons engagement coordination, and direction for all services and allied forces. The system will provide jamming-resistant, wide-area communications on a Link-16 network among MIDS and Joint Tactical Information Distribution System (JTIDS) equipped platforms. The MIDS/LVT and MIDS On Ship Terminal hardware, publications, performance specifications, operational capability, parameters, vulnerabilities to countermeasures, and software documentation are classified Confidential. The classified information to be provided consists of that which is necessary for the operation, maintenance, and repair (through intermediate level) of the data link terminal, installed systems, and related software.
- o. F-16 Block 40/50 Simulator/Training Devices: A complete, high fidelity simulation for the post-CCIP F-16 Block 40/50 aircraft realistically simulates all hardware, software, avionics, and weapons requested by the buyer, so all of the capabilities and sensitivities associated with the aircraft itself are evident in the simulator. Hardware is Unclassified; software and overall simulation are classified up to Secret.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

## CERTIFICATION UNDER § 620C(d) OF THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED

Pursuant to § 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (§ 1-100) and State Department Delegation of Authority No. 145 (§ 1(a)(1)), I hereby certify that the export of defense articles and services associated with the modification of 218 F-16 Aircraft, to include the integration of export versions of weapons available on F-16s, system integration and testing, missile modifications, software development/integration, test sets and support equipment, spare and repair parts, publications and technical data, maintenance, personnel training and training equipment, U.S. Government and contractor representatives, contractor engineering and technical support services, and other related elements of logistics support is consistent with the principles contained in § 620C(b) of the Act.

This certification will be made part of the notification to Congress under § 36(b) of the Arms Export Control Act, as amended, regarding the proposed sale of the above-named articles and services and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

  
\_\_\_\_\_  
John R. Bolton  
Under Secretary of State for  
Arms Control and International Security

[FR Doc. 04-23119 Filed 10-14-04; 8:45 am]  
BILLING CODE 5001-06-C

### DEPARTMENT OF DEFENSE

#### Office of the Secretary

#### Renewal of the Planning and Steering Advisory Committee (Navy)

**ACTION:** Notice.

**SUMMARY:** The Planning and Steering Advisory Committee (PSAC) has been renewed in consonance with the public interest, and in accordance with the provisions of Public Law 92-463, the "Federal Advisory Committee Act."

The PSAC provides an avenue of communications by which a

distinguished group representing scientific, academic engineering and intelligence communities advises the Chief of Naval Operations on questions related to SSBN Security. Their mission is to make in-depth technical assessments of U.S. and foreign threat ASW developments and related technologies, to critically review programs which potentially impact SSBN survivability, and to evaluate intelligence efforts to identify and define ASW and SSBN survivability threats.

The Committee will continue to be composed of selected Group members to conduct detailed examinations of matters related to SSBN security.

**FOR FURTHER INFORMATION CONTACT:**  
Laura Wurzer, telephone: 301-693-0934.

Dated: October 8, 2004.

**L.M. Bynum,**  
*OSD Federal Register Liaison Officer,*  
*Department of Defense.*

[FR Doc. 04-23114 Filed 10-14-04; 8:45 am]  
BILLING CODE 5001-06-M

### DEPARTMENT OF DEFENSE

#### Office of the Secretary

#### National Security Education Board Meeting

**AGENCY:** National Defense University,  
DOD.



**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Public Law 92-463, notice is hereby given of a forthcoming meeting of the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Secretary concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Public Law 102-183, as amended.

**DATES:** October 29, 2004.

**ADDRESSES:** The Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

**FOR FURTHER INFORMATION CONTACT:** Dr. Edmond J. Collier, Deputy Director for Programs, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn P.O. Box 20010, Arlington, Virginia 22209-2248; (703) 696-1991. Electronic mail address: [colliere@ndu.edu](mailto:colliere@ndu.edu)

**SUPPLEMENTARY INFORMATION:** The Board meeting is open to the public.

Dated: October 8, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04-23115 Filed 10-14-04; 8:45 am]

**BILLING CODE 5001-06-M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Defense Science Board

**AGENCY:** Department of Defense.

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** The Defense Science Board Task Force on Identification Technologies will meet in closed session on November 4-5, 2004, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will assess current technologies and operational concepts to identify and track individuals and materiel.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. In this assessment, the task force's investigation will encompass defense, intelligence, and commercial systems, including compartmented technology in development and promising technologies in the lab that are not yet deployed. Technologies will include passive/active, line of sight/non-line of

sight, and cooperative/non-cooperative. Potential mechanisms include predictive behavior modeling based on threat characteristics (attack modality, ideological makeup, social, ethnic, religious and political tendencies, etc.), identification technologies such as biometrics (iris scans, facial features, voice prints, etc.), DNA matching, and advanced non-identification technologies such as EO, RF, hyperspectral, and fluid surface assembly (FSA) sensors.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92-463, as amended (5 U.S.C. App. 2), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

Dated: October 8, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04-23113 Filed 10-14-04; 8:45 am]

**BILLING CODE 5001-06-M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Defense Science Board

**AGENCY:** Department of Defense.

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** The Defense Science Board Task Force on Red Lessons Learned will meet in closed session on October 22, 2004, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. This Task Force will assess what useful information can our adversaries learn from U.S. military engagement and, particularly, what might they have learned from Operation Iraqi Freedom and Operation Enduring Freedom; identify the channels through which adversaries learn about U.S. capabilities; is there any evidence an adversary is adjusting to U.S. capabilities and what might the U.S. do to counter this; what are the indicators or observables that the Intelligence Community can focus on to determine if an adversary is engaging in this type of practice and do the indicators change in peacetime or wartime; do different technology insertion models exist; is there any evidence potential adversaries are targeting the seams in the U.S. command and control alignment and planning process; and the preceding areas of concern focus primarily on the military operations phases, are the potential adversaries observing,

analyzing and adapting during the preparation and stabilization phase?

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. 92-463, as amended (5 U.S.C. App. 2), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: October 7, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04-23116 Filed 10-14-04; 8:45 am]

**BILLING CODE 5001-06-M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Threat Reduction Advisory Committee

**AGENCY:** Department of Defense, Office of the Under Secretary of Defense (Acquisition, Technology and Logistics).

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** The Threat Reduction Advisory Committee will meet in closed session on Thursday, December 2, 2004, at the Institute for Defense Analyses (IDA), and on Friday, December 3, 2004, in the Pentagon, Washington, DC.

The mission of the Committee is to advise the Under Secretary of Defense (Acquisition, Technology and Logistics) on combating weapons of mass destruction, chemical and biological defense, transformation of the nuclear deterrence, and other matters related to the Defense Threat Reduction Agency's mission.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended (5 U.S.C. Appendix II), it has been determined that this Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly the meeting will be closed to the public.

**DATES:** Thursday, December 2, 2004, (8 a.m. to 4 p.m.) and Friday, December 3, 2004, (8 a.m. to 9:20 a.m.)

**ADDRESSES:** Institute for Defense Analyses, Board Room, 4850 Mark Center Drive, Alexandria, Virginia and the USD(AT&L) Conference Room

(3D1019), the Pentagon, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Colonel Don Culp, USAF, Defense Threat Reduction Agency/AST, 8725 John J. Kingman Road MS 6201, Fort Belvoir, VA 22060-6201, Phone: (703) 767-5717.

Dated: October 7, 2004.

**L.M. Bynum,**  
Alternate OSD Federal Register Liaison  
Officer, Department of Defense.  
[FR Doc. 04-23117 Filed 10-14-04; 8:45 am]  
**BILLING CODE 5001-08-M**

## DEPARTMENT OF DEFENSE

### Defense Finance and Accounting Service

### Privacy Act of 1974; Systems of Records

**AGENCY:** Defense Finance and Accounting Service.

**ACTION:** Notice to add a new system of records.

**SUMMARY:** The Defense Finance and Accounting Service (DFAS) is proposing to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This Action will be effective without further notice on November 15, 2004 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the FOIA/PA Program Manager, Office of Corporate Communications, Defense Finance and Accounting Service, 6760 E. Irvington Place, Denver, CO 80279-8000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Krabbenhoft at (303) 676-7514.

**SUPPLEMENTARY INFORMATION:** The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on October 4, 2004, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated

February 8, 1996 (February 20, 2004, 61 FR 6427).

Dated: October 7, 2004.

**L.M. Bynum,**  
Alternate OSD Federal Register Liaison  
Officer, Department of Defense.

### T7320

#### SYSTEM NAME:

Electronic Funds Transfer (EFT) Records.

#### SYSTEM LOCATIONS:

Defense Finance and Accounting Service, Columbus, P.O. Box 182317 Columbus, OH 43218-2317

Defense Finance and Accounting Service, Cleveland, 1240 E. 9th Street, Cleveland, OH 44199-8002

Defense Finance and Accounting Service, Denver, 6760 E. Irvington Place, Denver, CO 80279-8000

Defense Finance and Accounting Service, Indianapolis, 8899 E. 56th St., Indianapolis, IN 46249-0100

Defense Finance and Accounting Service, Kansas City, 1500 E. Bannister Road, Kansas City, MO 64197-0001

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense (DoD) civilian personnel, and other U.S. government employees paid by DFAS; active military, former, and retired military members; Reserve and National Guard personnel; academy nominees, applicants, and cadets; dependents of military personnel; and foreign nationals residing in the United States, and all in receipt of payments from DFAS.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's Name, Social Security Number, home address, financial institution account number, account type, financial institution name, American Banking Association routing and transmittal number, lock box number, electronic funds transfer payment method, and electronic funds transfer waiver.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Pub. L. 104-134, Debt Collection Improvement Act of 1996; DoD Financial Management Regulation 7000.14-R, Volumes 7B, 7C, 8, Military Pay Policy and Procedures—Retired Pay, Military Pay Policy and Procedures—Active Duty and Reserve Pay, Civilian Pay Policy and Procedures; and E.O. 9397 (SSN).

#### PURPOSE(S):

The Electronic Funds Transfer Records will provide DoD with a central

repository for military and civilian remittance information, which will be used to verify the validity of payee and financial institution accounts prior to issuing an electronic payment.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, as amended, these records or information contained therein may specifically be disclosed outside the Department of Defense as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Treasury Department to provide information on check issues and electronic funds transfers.

To the Internal Revenue Service to report taxable earnings and taxes withheld, accounting, and tax audits, and to compute or resolve tax liability or tax levies.

To the Social Security Administration to report earned wages by members for the Federal Insurance Contribution Act, accounting or tax audits, and death notices.

To the Department of Veterans Affairs to report compensation, waivers, and audits, life insurance accounting, disbursement and benefit determinations, and death notices.

To the American Red Cross and military relief societies to assist military personnel, and their dependents in determining the status of monthly pay, dependents' allotments, loans, and related financial transactions, and to perform other relief-related duties as requested by the service member.

To Federal Reserve banks to distribute payments made through the direct deposit system to financial organizations or their processing agents authorized by individuals to receive and deposit payments in their accounts.

The DoD 'Blanket Routine Uses' published at the beginning of the Defense Finance and Accounting Service compilation of systems of records notices also apply to this system.

#### DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act, (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966, (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay

delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number for individuals); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

**STORAGE:**

The records are maintained in computers and computer output products; electronic storage media, and hard copy documents.

**RETRIEVABILITY:**

Retrieved by entering the last four digits of the Social Security Number, and a portion of the person's last name.

**SAFEGUARDS:**

Records are stored in office buildings protected by guards, controlled screening, visitor registers are used, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their official duties. Passwords and digital signatures are used to control access to the systems data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the record system.

**RETENTION AND DISPOSAL:**

Records in this system are maintained for 6 years and 3 months after date of cutoff.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Strategic Business Office, Defense Finance and Accounting Service, Columbus, P.O. Box 182317 Columbus, OH 43218-2317.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Office of Corporate Communications, Freedom of Information Act/Privacy Act Program Manager, 6760 E. Irvington Place, Denver, CO 80279-8000.

Individual should provide their full name, Social Security Number, office or

organization where currently assigned, if applicable, and current address, and telephone number.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Office of Corporate Communications, Freedom of Information Act/Privacy Act Program Manager, 6760 E. Irvington Place, Denver, CO 80279-8000.

Individual should provide their full name, Social Security Number, office or organization where currently assigned, if applicable, and current address, and telephone number.

**CONTESTING RECORD PROCEDURES:**

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11-R; 32 CFR part 324; or may be obtained from the Defense Finance and Accounting Service, Office of Corporate Communications, Freedom of Information Act/Privacy Act Program Manager, 6760 E. Irvington Place, Denver, CO 80279-8000.

**RECORD SOURCE CATEGORIES:**

Information is obtained from the Active Duty, Reserve, Guard, separated or retired military members, cadets, dependents, annuitants, and civilian employees.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 04-23120 Filed 10-14-04; 8:45 am]

**BILLING CODE 5001-06-M**

**DEPARTMENT OF DEFENSE**

**Office of the Joint Staff; Privacy Act of 1974; System of Records**

**AGENCY:** Office of the Joint Staff, DoD.

**ACTION:** Notice to add a system of records.

**SUMMARY:** The Office of the Joint Staff, DoD proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The changes will be effective on November 15, 2004 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to DoD/ WHS/ESCD, Directives and Records Division, Directives and Records Branch, 201 12th Street, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Ms. Juanita Irvin at (703) 601-4722, extension 110.

**SUPPLEMENTARY INFORMATION:** The Office of the Joint Staff notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on October 4, 2004, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: October 7, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**JS009ATHD**

**SYSTEM NAME:**

Anti-Terrorism Awareness Training.

**SYSTEM LOCATION:**

Defense Technical Information Center, 8725 John J. Kingman Road, Fort Belvoir, VA 22060-6218.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Service members (to include the Reserve and National Guard), DoD civilian employees, DoD contractors, and DoD employee dependant family members.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The information collected from the individual includes their first name, last name, last 4 digits of their Social Security Number, rank, user category, combatant command region, and date training completed.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C., Chapter 5, sections 151-155; DoD Instruction 2000.16, DoD Antiterrorism Standards; and E.O. 9397 (SSN).

**PURPOSE(S):**

Due to the increased terrorism threat world-wide, the Department of Defense (DoD) requires that all DoD employees, contractors and dependents who will be traveling outside the United States take terrorism awareness training to make them more aware of potential threats. The system will be used by authorized

DoD officials to validate required training has been completed within the past year.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Joint Staff's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are automated and are maintained in computers and computer output products and reside on disk and magnetic tape.

**RETRIEVABILITY:**

A combination of individual's name and the last 4 digits of their Social Security Number retrieve the record. Training date is then displayed for matching individual records.

**SAFEGUARDS:**

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to those personnel who require the records to perform their official duties consistent with the purpose for which the information was collected. Access to computerized data is restricted by passwords, which are changed periodically.

**RETENTION AND DISPOSAL:**

Disposition pending. Until the National Archives and Records Administration has approved the retention and disposition schedule for these records treat them as permanent.

**SYSTEM MANAGER(S) AND ADDRESS:**

Branch Chief, Programs and Resources, Antiterrorism Division J-34, The Joint Staff, J-3, Deputy Directorate for Antiterrorism and Homeland Defense, 3000 Joint Staff Pentagon, Washington, DC 20318-3000.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Branch Chief, Programs and Resources,

Antiterrorism Division J-34, The Joint Staff, J-3, Deputy Directorate for Antiterrorism and Homeland Defense, 3000 Joint Staff Pentagon, Washington, DC 20318-3000.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves is contained in this system should address written inquiries to the Branch Chief, Programs and Resources, Antiterrorism Division J-34, The Joint Staff, J-3, Deputy Directorate for Antiterrorism and Homeland Defense, 3000 Joint Staff Pentagon, Washington, DC 20318-3000.

**CONTESTING RECORD PROCEDURES:**

The Joint Staff rules for accessing records and for contesting contents and appealing initial determinations are contained in OSD Administrative Instruction 81; Joint Administrative Instruction 2530.9A; 32 CFR part 311; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From the individual. Date training was taken is computer generated.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 04-23121 Filed 10-14-04; 8:45 am]

BILLING CODE 5001-06-M

## DEPARTMENT OF EDUCATION

**Student Assistance General Provisions, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, William D. Ford Federal Direct Loan, Federal Pell Grant, and Leveraging Educational Assistance Partnership Programs**

**AGENCY:** Department of Education.

**ACTION:** Notice extending institutional and applicant filing and reporting deadlines.

**SUMMARY:** The Secretary announces the extension of the deadline dates for specific filing and reporting activities, including those published in the **Federal Register** on March 10, 2004 (69 FR 11403) and March 15, 2004 (69 FR 12136). The Secretary takes this action as a result of the damage and disruptions caused by the recent hurricanes and tropical storms in the southern and eastern parts of the United States, including Puerto Rico. The new dates or requested extensions apply only to (1) institutions or third-party servicers that are located in a federally-

declared disaster area and that were adversely affected by these severe weather conditions, and (2) applicants that are adversely affected by these severe weather conditions.

**SUPPLEMENTARY INFORMATION:** On September 21, 2004 the Department published a "Dear Partner Letter" announcing the intention of the Secretary to extend certain deadline dates. That letter is available at: <http://ifap.ed.gov/dpccletters/GEN0409.html>.

In this notice, the Secretary officially establishes these new deadlines, as set forth below.

### Activities Related to Institutional Reporting

**FISAP Filing Deadline:** For an affected institution or third-party servicer that is unable to meet the previously published deadline of October 1, 2004, the Secretary announces the extension to October 30, 2004 of the date by which the institution's FISAP (Fiscal Operations Report for 2003-2004 and Application to Participate for 2005-2006) must be submitted. If the institution or servicer is unable to meet this extended deadline, it must contact the Campus-Based Call Center at 1-877-801-7168. An institution or servicer that submits a FISAP after October 1, 2004 must maintain documentation of the hurricane-related reason why it did so.

**2003-2004 Federal Pell Grant Reporting Deadline:** For an affected institution or third-party servicer that is unable to meet the previously published deadline of September 30, 2004, the Secretary grants administrative relief and announces the extension to October 22, 2004 of the date by which the institution or servicer must report Federal Pell Grant payments (and adjustments) for the 2003-2004 award year to the Common Origination and Disbursement (COD) System. An institution or servicer that submits Pell Grant payment information for the 2003-2004 award year after September 30, 2004 must maintain documentation of the hurricane-related reason why it did so.

**Submission of Federal Pell Grant Disbursement Records:** The Secretary announces the extension to 60 days (instead of the normal 30 days) of the time within which an affected institution or third-party servicer must submit a Federal Pell Grant disbursement record to the COD System. If the institution or servicer finds that it cannot submit the record within this 60-day period, it must contact the COD School Relations Center at 1-800-4PGRANT (1-800-474-7268). An affected institution or servicer that does

not submit Pell Grant payment information within the current 30-day timeframe must maintain documentation of the hurricane-related reason why it did so.

**Submission of Federal Direct Loan Records:** The Secretary will not enforce the current 30-day submission requirement against an affected institution or third-party servicer that is unable to submit Direct Loan promissory notes, loan origination records, and disbursement records (including adjustments) to the COD System. Instead, the institution or servicer has 60 days to submit these records. If an institution or servicer finds that it cannot submit these records within this 60-day period, it must contact the COD School Relations Center at 1-800-848-0978. An affected institution or servicer that does not submit Direct Loan information within the current 30-day timeframe must maintain documentation of the hurricane-related reason why it did so.

#### Activities Related to Applicant Filing

**FAFSA Correction Deadline:** For an affected applicant, the Secretary announces the extension from September 17, 2004 to October 8, 2004 of the date by which the Department's Central Processing System must have received the following items:

- Paper corrections (including address changes and changes of institutions) made using a SAR;
- Electronic corrections (including address changes and changes of institutions) made from FAFSA on the Web, FAA Access to CPS Online, or EDEExpress;
- Changes to mailing or e-mail addresses, changes of institutions, and requests for a duplicate SAR made by phone to the Federal Student Aid Information Center; and
- Paper signature pages and electronic signatures.

#### Activities Related to Documents Received by an Institution

**Receipt of SARs and ISIRs:** For an affected applicant, institution, or third-party servicer, the Secretary announces the extension from September 17, 2004 to October 8, 2004 of the date by which the institution or servicer must have received a SAR from a student, or an ISIR from the Department, for the student to be considered for a Federal Pell Grant for the 2003–2004 award year. An institution or servicer that pays Federal Student Aid on a SAR or ISIR that was received after September 17, 2004 must maintain documentation of the hurricane-related reason why the

SAR or ISIR was not received by that date.

**Receipt of Verification Documents:** The Secretary announces the extension from September 17, 2004 to October 8, 2004 of the date by which an institution or third-party servicer must have received all requested verification documents to consider an applicant for Federal Student Aid for the 2003–2004 award year. An institution or servicer that pays Federal Student Aid based on verification documents received after September 17, 2004 must maintain documentation of the hurricane-related reason why those documents were not received by that date.

**FOR FURTHER INFORMATION CONTACT:** For general questions, John Kolotos, U.S. Department of Education, 400 Maryland Avenue, SW., (UCP room 113F1), Washington, DC 20202. Telephone: (202) 377-4027, FAX: (202) 275-4552, or by email: [john.kolotos@ed.gov](mailto:john.kolotos@ed.gov).

For other questions or requests for extensions, contact the appropriate call center as previously noted or the Customer Service Call Center at 1-800-433-7327.

**Electronic Access to This Document:** You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

**Program Authority:** 20 U.S.C. 1070a, 1070b–1070b–4, 1070c–1070c–4, 1071–1087–2, 1087a–1087j, 1087aa–1087ii, 1094, and 1099c; 42 U.S.C. 2751–2756b. Catalog of Federal Domestic Assistance numbers: 84.007 Federal Supplemental Educational Opportunity Grant (FSEOG) Program; 84.032 Federal Family Education Loan (FFEL) Programs; 84.033 Federal Work-Study (FWS) Program; 84.038 Federal Perkins (Perkins) Loans; 84.063 Federal Pell Grant (Pell) Program; 84.069 Leveraging Educational Assistance Partnership (LEAP) Programs; and 84.268 William D. Ford Federal Direct Loan (Direct Loan) Programs.

Dated: October 12, 2004.

**Theresa S. Shaw,**

*Chief Operating Officer, Federal Student Aid.*  
[FR Doc. 04–23183 Filed 10–14–04; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP99–301–117]

#### ANR Pipeline Company; Notice of Negotiated Rate

October 7, 2004.

Take notice that on October 1, 2004, ANR Pipeline Company (ANR) tendered for filing five service agreements entered into between ANR and Wisconsin Electric Power Company (WEPCO) and one service agreement entered into between ANR and Wisconsin Public Service Corporation (WPS), pursuant to ANR's Rate Schedules FTS–3, FSS and NSS. ANR is submitting this filing to comply with the Commission's certificate order authorizing ANR's EastLeg Project.

ANR states that copies of its filing have been sent to all jurisdictional customers, and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2620 Filed 10-14-04; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP99-301-118]

#### ANR Pipeline Company; Notice of Negotiated Rate Filing

October 7, 2004.

Take notice that on October 4, 2004, ANR Pipeline Company (ANR) tendered for filing and approval one amendment to an existing negotiated rate service agreement between ANR and Wisconsin Electric Power Company.

ANR states that the amendment reflects a modification to the pricing provision of the contract. ANR requests that the Commission accept and approve the subject negotiated rate agreement amendments to be effective October 1, 2004.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically

should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2621 Filed 10-14-04; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP04-609-000]

#### CenterPoint Energy—Mississippi River; Transmission Corporation; Notice of Tariff Filing

October 7, 2004.

Take notice that on September 24, 2004, CenterPoint Energy—Mississippi River Transmission Corporation (MRT) filed with the Commission its annual fuel adjustment filing pursuant to section 22 of the General Terms and Conditions of MRT's FERC Gas Tariff, Third Revised Volume No. 1, requesting an effective date of November 1, 2004, MRT filed the following sheets:

Fifty-Third Revised Sheet No. 5  
Fifty-Third Revised Sheet No. 6  
Fiftieth Revised Sheet No. 7  
Twenty-Second Revised Sheet No. 8

MRT states that the purpose of this filing is to adjust the Fuel Use and LUFG Percentages under its Rate Schedules FTS, SCT, ITS, FSS and ISS.

MRT further states that a copy of this filing is being mailed to each of MRT's customers and to the state Commissions of Arkansas, Illinois, Louisiana, Missouri and Texas.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2638 Filed 10-14-04; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP95-408-059]

#### Columbia Gas Transmission Corporation; Notice of FERC Filing

October 7, 2004.

Take notice that on September 30, 2004, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff), the following revised tariff sheets with a proposed effective date of November 1, 2004:

Seventy-second Revised Sheet No. 25  
Seventy-second Revised Sheet No. 26  
Seventy-second Revised Sheet No. 27  
Thirty-second Revised Sheet No. 30A

Columbia states it was permitted to reflect in its base rates a Settlement Component to be collected from firm transportation customers for the period beginning November 1, 1996 and ending October 31, 2004. Columbia states that as the Settlement Period is ending, Columbia is filing to remove the Settlement Component from its rates effective November 1, 2004.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2632 Filed 10-04-04; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP04-617-000]

#### Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

October 7, 2004.

Take notice that on September 30, 2004, Dominion Transmission, Inc. (DTI) tendered for filing as part of its

FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective November 1, 2004:

Twenty-First Revised Sheet No. 31,  
Twenty-Fifth Revised Sheet No. 32,  
Thirteenth Revised Sheet No. 34,  
Seventeenth Revised Sheet No. 35.

DTI states that the purpose of this filing is to update DTI's effective Electric Power Cost Adjustment (EPCA), through the mechanism described in section 17 of the General Terms and Conditions. DTI states that it is seeking to recover prospective electric costs of approximately \$3.1 million which is a reduction from the \$3.8 million estimated in the previous year's filing, Docket No. RP03-624 DTI further states that the filing includes surcharge rate adjustments resulting from the reconciliation of the prior year's actual cost and recoveries.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call

(866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2640 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP04-618-000]

#### Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

October 7, 2004.

Take notice that on September 30, 2004, Dominion Transmission Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 2004:

Twenty-Second Revised Sheet No. 31,  
Twenty-Sixth Revised Sheet No. 32,  
Fourteenth Revised Sheet No. 34,  
Eighteenth Revised Sheet No. 35.

DTI states that the purpose of this filing is to update DTI's effective Transportation Cost Rate Adjustment through the mechanism described in section 15 of the General Terms and Conditions (GT&C).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.



This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2641 Filed 10-14-04; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP05-15-000]

#### El Paso Natural Gas Company; Notice of Tariff Filing

October 7, 2004.

Take notice that on October 4, 2004, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1-A, 1st Rev Twenty-First Revised Sheet No. 1, to become effective November 4, 2004.

El Paso states that it is submitting two firm transportation service agreements (TSAs) for the Commission's information and material deviation review and has listed the TSAs on the tendered tariff sheet as potential non-conforming agreements.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2651 Filed 10-14-04; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP05-2-000]

#### Gas Transmission Northwest Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 7, 2004.

Take notice that on October 1, 2004, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1-A, Fifth Revised Sheet No. 4, to become effective November 1, 2004.

GTN states that it is revising this tariff sheet to modify the rate for service under Rate Schedule FTS-1(E-2)(WWP) in accordance with the negotiated rate formula for that service as specified in GTN's tariff. GTN also states that the proposed changes would decrease revenues associated with Rate Schedule FTS-1(E-2)(WWP) by approximately 0.528%.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by

the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2624 Filed 10-14-04; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP99-518-063]

#### Gas Transmission Northwest Corporation; Notice of Negotiated Rates

October 7, 2004.

Take notice that on September 30, 2004, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1-A, Twelfth Revised Sheet No. 15, to become effective September 1, 2004.

GTN states that this sheet is being filed to reflect the continuation of a



negotiated rate agreement pursuant to evergreen provisions contained in the agreement.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, D.C. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
Secretary.

[FR Doc. E4-2634 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application for Amendment of License and Soliciting Comments, Protests, and Motions To Intervene

October 7, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

- a. *Application Type*: Non-project use of project lands and waters.
- b. *Project Number*: P-1494-277.
- c. *Date Filed*: September 20, 2004.
- d. *Applicant*: Grand River Dam Authority (GRDA).
- e. *Name of Project*: Pensacola Project.
- f. *Location*: The project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma. The project does not occupy any federal or tribal lands. The proposed non-project use would occupy project lands and waters on Grand Lake O' the Cherokees in Section 15, Township 25 North, Range 24 East in Delaware County near Grove, Oklahoma.
- g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791 (a)-825(r).
- h. *Applicant Contacts*: Mary Von Drehle or Teresa Hicks, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301. Phone: (918) 256-5545.
- i. *FERC Contact*: Any questions on this notice should be addressed to Steve Naugle at (202) 502-6061, or by e-mail: [steven.naugle@ferc.gov](mailto:steven.naugle@ferc.gov).

j. *Deadline for filing comments and or motions*: November 8, 2004.

k. *Description of the Application*: GRDA, the project licensee, requests Commission approval to grant a permit to Lakewood Village for the addition of one covered dock with 10 boat slips to an existing commercial facility containing five docks with 53 boat slips.

The proposed dock would be attached to the end of one of the facility's existing docks. The added slips would be used by patrons of the Lakewood Village mobile-home, RV-park, and marina complex.

l. *Location of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the

document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance with any FERC Online services, e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call toll free (866) 208-3676 for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*: Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers (P-1494-277). All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*: Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web

site at <http://www.ferc.gov> under the "e-Filing" link.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2613 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP05-3-000]

#### Guardian Pipeline, L.L.C.; Notice of Tariff Filing

October 7, 2004.

Take notice that on October 1, 2004, Guardian Pipeline, L.L.C. (Guardian) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Seventh Revised Sheet No. 5, to become effective November 1, 2004.

Guardian states that this filing is made in accordance with section 32 (Transporter's Use Gas Adjustment) of the General Terms and Conditions in its FERC Gas Tariff, Original Volume No. 1.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC.

There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2625 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP04-425-000]

#### Gulf South Pipeline Company, LP; Notice of Application

October 6, 2004.

Take notice that on September 30, 2004, Gulf South Pipeline Company, LP (Gulf South), 20 East Greenway, Houston, Texas 77046, filed in Docket No. CP04-425-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity to increase the total overall storage capacity of the Jackson Gas Storage Facility (Jackson Storage) in Rankin County, Mississippi, by 2.4 Bcf. Gulf South requests limited-term certificate authority, for a period beginning no later than November 15, 2004 through October 31, 2005, to inject, store, and withdraw 2.4 Bcf of system operational gas at Jackson Storage in addition to the current overall storage capacity of 5.55 Bcf, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502-3676, or TTY, (202) 502-8659.

Any questions regarding this application should be directed to J. Kyle Stephens, Director of Certificates, Gulf South Pipeline Company, LP, 20 East Greenway Plaza, Houston, Texas 77046, Phone: (713) 544-7309, Fax: (713) 544-3540, or Email: [kyle.stephens@gulfsouthpl.com](mailto:kyle.stephens@gulfsouthpl.com).

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project

should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this

proposal, it is important either to file comments or to intervene as early in the process as possible.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link.

*Comment Date:* October 18, 2004.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2610 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP98-18-016]

#### Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

October 7, 2004.

Take notice that on September 30, 2004, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Substitute Original Sheet No. 6E, to be effective on August 16, 2004.

Iroquois states that the filing is being made to comply with the Commission's order issued September 15, 2004 (108 FERC ¶ 61,234) and corrects an inadvertent reference to Consolidated Edison Company of New York, Inc. rather than to Virginia Power Energy Marketing, Inc. (Virginia Power). Iroquois requests a waiver of the 30-day notice requirement to permit the tariff sheet to take effect on August 16, 2004, the date the negotiated rate agreement with Virginia Power took effect.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an

original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2619 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP04-615-000]

#### Iroquois Gas Transmission System, L.P.; Notice of Proposed Change in FERC Gas Tariff

October 7, 2004.

Take notice that on September 30, 2004, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sixteenth Revised Sheet No. 4A, to be effective on November 1, 2004.

Iroquois states that, pursuant to Part 154 of the Commission's regulations and section 12.3 of the General Terms and Conditions of its tariff, it is filing Sixteenth Revised Sheet No. 4A and supporting worksheets as part of its annual update of its Deferred Asset Surcharge to reflect the annual revenue requirement associated with its Deferred Asset for the amortization period commencing November 1, 2004.

Iroquois states that the revised tariff sheet reflects a decrease of \$.0001 per Dth in Iroquois' effective Deferred Asset Surcharge for Zone 1 (from \$.0006 to \$.0005 per Dth), a decrease of \$.0001 per Dth in Iroquois' effective Deferred Asset Surcharge for Zone 2 (from \$.0004 to \$.0003 per Dth) and a decrease in the Inter-Zone surcharge of \$.0002 per Dth (from \$.0010 to \$.0008 per Dth).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and

385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2639 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP04-619-000]

#### Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 7, 2004.

Take notice that on September 30, 2004, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to its filing, to be effective November 1, 2004.

Kern River states that the purpose of this filing is to propose certain modifications to section 15 of the General Terms and Conditions of Kern River's tariff, "Capacity Release Program," and to the forms of Exhibits "RS" and "RP" pertaining to released and replacement transportation service agreements, respectively. Specifically, Kern River states that it is proposing: (1) to clarify Kern River's current policies and procedures pertaining to both temporary and permanent capacity releases; and (2) to address contingencies and shipper-defined bid evaluation methodologies for released capacity.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call

(866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2642 Filed 10-14-04; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP05-4-000]

#### Maritimes & Northeast Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

October 7, 2004.

Take notice that on October 1, 2004, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sixth Revised Sheet No. 11, to become effective on November 1, 2004.

Maritimes states that it is making this Fuel Retainage Quantity (FRQ) filing pursuant to section 20 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff. Maritimes further states that it is proposing a decrease of 0.10% to the Fuel Retainage Percentage (FRP) for the Spring Shoulder, Summer and Fall Shoulder Periods. The projected FRP for the Spring Shoulder, Summer and Fall Shoulder Periods is 1.00%. The projected FRP for the Winter Period is 1.10%.

Maritimes states that copies of this filing were mailed to all affected customers of Maritimes and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2626 Filed 10-14-04; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP05-9-000]

#### Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 7, 2004.

Take notice that Northern Natural Gas Company (Northern), on October 1, 2004, tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets:

Eighth Revised Sheet No. 1  
Seventh Revised Sheet No. 66C

Northern states that it is filing the above-referenced tariff sheets to submit a Rate Schedule TFX service agreement for Commission acceptance as a non-conforming agreement.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of

intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FEROnlineSupport@ferc.gov](mailto:FEROnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2631 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP96-272-053]

#### Northern Natural Gas Company; Notice of Proposed Changes in Gas Tariff

October 6, 2004.

Take notice that Northern Natural Gas Company (Northern) on September 30, 2004 tendered for filing to become part of Northern's Gas Tariff, the following tariff sheets proposed to be effective on October 1, 2004:

Fifth Revised Volume No. 1  
34 Revised Sheet No. 66

Northern states that the above sheets are being filed to implement a specific negotiated rate transaction with Iowa Falls Ethanol Plant LLC in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-

Service Ratemaking for Natural Gas Pipelines.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, D.C. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FEROnlineSupport@ferc.gov](mailto:FEROnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2633 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP04-621-000]

#### Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff and Filing of Non-Conforming Service Agreements

October 7, 2004.

Take notice that on September 30, 2004, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fifth Revised Sheet No. 371 and Eighth Revised Sheet No. 373, to become effective November 1, 2004. Northwest states that it also tendered for

filing two Rate Schedule TF-1 non-conforming service agreements.

Northwest states that the purpose of this filing is to: (1) Submit two Rate Schedule TF-1 service agreements containing contract-specific operational flow order provisions that do not conform to the Rate Schedule TF-1 form of service agreement contained in Northwest's tariff, (2) add these agreements to the list of non-conforming service agreements in Northwest's tariff; and (3) remove three service agreement due to termination from the list of nonconforming service agreements in Northwest's tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FEROnlineSupport@ferc.gov](mailto:FEROnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2644 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket No. RP04-608-000]****OkTex Pipeline Company; Notice of Tariff Filing**

October 7, 2004.

Take notice that on September 24, 2004, OkTex Pipeline Company (OkTex) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of October 1, 2004:

15th Revised Sheet No. 5  
4th Revised Sheet No. 5A  
1st Revised Sheet No. 5B  
1st Revised Sheet No. 5C

OkTex states that the purpose of the filing is to reflect a change in its ACA surcharge from \$0.0021 to \$0.0019 for the period October 1, 2004 through September 30, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,  
Secretary.

[FR Doc. E4-2637 Filed 10-14-04; 8:45 am]

**BILLING CODE 6717-01-P****DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket No. RP05-10-000]****Panhandle Eastern Pipe Line Company, LP; Notice of Proposed Changes in FERC Gas Tariff**

October 7, 2004.

Take notice that on October 1, 2004, Panhandle Eastern Pipe Line Company, LP (Panhandle) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed on Appendix A attached to the filing, to become effective November 1, 2004.

Panhandle states that this filing is made in accordance with section 24 (Fuel Reimbursement Adjustment) of the General Terms and Conditions (GT&C) in Panhandle's FERC Gas Tariff, Third Revised Volume No. 1, and that the purpose of the filing is to update the fuel reimbursement percentages proposed to be effective November 1, 2004.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>.

Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,  
Secretary.

[FR Doc. E4-2646 Filed 10-14-04; 8:45 am]

**BILLING CODE 6717-01-P****DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket No. EC04-102-000]****Portland General Electric Company, PGE Trust; Notice of Filing**

October 6, 2004.

Take notice that on September 7, 2004, Portland General Electric Co. and Enron Corp., filed with the Commission a Notice of Withdrawal of the application filed on April 29, 2004 in the above-referenced docket.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on October 18, 2004.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. E4-2611 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP99-513-034]

#### Questar Pipeline Company; Notice of Negotiated Rates

October 7, 2004.

Take notice that on October 1, 2004, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Thirty-Fifth Revised Sheet No. 7, with an effective date of October 1, 2004.

Questar states that the tariff filing is being filed to reflect the addition of two new negotiated-rate contracts with its customers.

Questar states that a copy of this filing has been served upon all parties to this proceeding, Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that

document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4-2623 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP05-1-000]

#### SCG Pipeline, Inc.; Notice of Proposed Changes in FERC Gas Tariff

October 7, 2004.

Take notice that on October 1, 2004, SCG Pipeline, Inc. (SCG) tendered for filing as part of its FERC Gas Tariff, Volume No. 1, Original Volume No. 1, First Revised Sheet No. 8, to become effective November 1, 2004.

SCG states that the purpose of this filing is to propose an adjustment to reflect a change in SCG's Fuel Retainage Percentage, pursuant to section 22 of the General Terms and Conditions of SCG's Tariff. SCG further states that the filing provides for shipper refunds to clear the balance in SCG's Fuel Retainage Quantity Deferred Account on July 31, 2004.

SCG states that a copy of this filing has been served on SCG's customers and on interested State regulatory commissions.

Any person desiring to intervene or to protest this filing must file in

accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4-2645 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP05-11-000]

#### Southwest Gas Storage Company; Notice of Tariff Filing

October 7, 2004.

Take notice that on October 1, 2004, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twelfth Revised Sheet



No. 5, to become effective November 1, 2004.

Southwest states that filing is made in accordance with section 16 (Fuel Reimbursement Adjustment) of the General Terms and Conditions (GT&C) in Southwest's FERC Gas Tariff, First Revised Volume No. 1, and that the purpose of the filing is to update the fuel reimbursement percentages proposed to be effective November 1, 2004.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2647 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP96-312-141]

#### Tennessee Gas Pipeline Company; Notice of Negotiated Rate

October 7, 2004.

Take notice that on October 1, 2004, Tennessee Pipeline Company (Tennessee) tendered for filing a negotiated rate arrangement between Tennessee and Constellation Power Service, Inc.

Tennessee requests that the negotiated rate arrangement between Tennessee and Constellation become effective on November 1, 2004.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call

(866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2616 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP96-312-142]

#### Tennessee Gas Pipeline Company; Notice of Negotiated Rate

October 7, 2004.

Take notice that on October 4, 2004, Tennessee Pipeline Company (Tennessee) tendered for filing a negotiated rate arrangement between Tennessee and NJR Energy Services Company.

Tennessee requests that the negotiated rate arrangement between Tennessee and NJR become effective on November 1, 2004.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call



(866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2617 Filed 10-14-04; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP05-16-000]

#### Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 7, 2004.

Take notice that on October 5, 2004, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Fifth Revised Sheet No. 413A, to become effective November 1, 2004.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on all parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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(866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2652 Filed 10-14-04; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP99-480-010]

#### Texas Eastern Transmission, LP; Notice of Negotiated Rate

October 7, 2004.

Take notice that on October 4, 2004, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as a part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, to become effective on November 1, 2004:

Original Sheet No. 109  
Original Sheet No. 110  
Original Sheet No. 111  
Sheet Nos. 112-125

Texas Eastern states that the purpose of this filing is to implement the negotiated rate agreements for firm transportation service to be rendered to Bridgeport, Dalton and Piedmont by means of the M-1 Expansion Project facilities approved by the Commission in Docket No. CP02-381.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2622 Filed 10-14-04; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP04-482-001]

#### Texas Eastern Transmission, LP; Notice of Compliance Filing

October 7, 2004.

Take notice that on October 1, 2004, Texas Eastern Transmission, LP (Texas Eastern) submitted a compliance filing pursuant to the Commission's *Order Texas Eastern Transmission, LP*, 108 FERC ¶ 61,274 (2004), issued on September 21, 2004, in Docket No. RP04-482-000.

Texas Eastern states that copies of the filing were served upon all affected customers of Texas Eastern and interested state commissions, as well as upon all parties on the Commission's official service list in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory

Commission, 888 First Street, NE., Washington, DC 20426.

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**Magalie R. Salas,**  
Secretary.

[FR Doc. E4-2635 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP04-512-001]

#### Texas Gas Transmission, LLC; Notice of Tariff Filing

October 7, 2004.

Take notice that on October 4, 2004, Texas Gas Transmission, LLC (Texas Gas) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Second Revised Sheet No. 33, to become effective October 1, 2004.

Texas Gas states that the purpose of this filing is to submit a substitute revised tariff sheet, in order to capture changes recently approved by the Commission in two previous filings.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory

Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FEROnlineSupport@ferc.gov](mailto:FEROnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
Secretary.

[FR Doc. E4-2636 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. RP04-623-000 and CP01-411-006]

#### Tractebel Calypso Pipeline, LLC; Notice of Offer of Settlement and Shortened Comment Period

October 6, 2004.

Take notice that on September 29, 2004, Tractebel Calypso Pipeline, LLC (Tractebel) filed an Offer of Settlement on the terms of an Interconnection Agreement dated September 23, 2004 (Agreement) between itself and Florida Gas Transmission Company (FGT) for Tractebel's delivery of revaporized liquefied natural gas (LNG) to FGT through future interconnecting facilities. Among other things, the Agreement sets forth terms for financial reimbursement and indemnification between the parties; construction, ownership and operation of the interconnecting facilities; and hourly flow and minimum temperature requirements for deliveries. Tractebel also included, as Appendix B to the Settlement, conforming revisions to its *pro forma* tariff, now under consideration by the Commission in Docket No. CP01-411-005.

Tractebel represents that it served a copy of the filing on all participants in a complaint proceeding brought by AES Ocean Express, LLC (Ocean Express) against FGT in Docket No. RP04-249-000; on all participants in Tractebel's certificate proceeding in Docket No. CP01-409-000, *et al.*; and on all other persons required to be served by operation of Rule 602 of the Commission's Rules of Practice and

Procedure.<sup>1</sup> Tractebel states that the Settlement resolves, as between Tractebel and FGT, the same interconnection issues under consideration in Ocean Express' complaint proceeding against FGT in Docket No. RP04-249-000. However, Tractebel notes that the instant Settlement does not purport to affect the outcome of the complaint proceeding.

Any person desiring to intervene in the proceeding in Docket No. RP04-623-000; or to protest the filing in Docket No. CP01-411-006 or Docket No. RP04-623-000, must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding in Docket No. RP04-623-000 must file in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Tractebel requests a shortened comment period under Rule 602 of 10 days for Comments, followed by 10 days for Reply Comments. In support of this request, Tractebel represents that the only parties directly affected by the Settlement are FGT, Tractebel, and its sole shipper, Tractebel Calypso LNG

<sup>1</sup> Tractebel attempted to file the Settlement in Docket No. RP04-249-000, a complaint filed by Ocean Express against FGT wherein Tractebel intervened and protested tariff revisions filed by FGT; and also in Docket No. CP01-409-000, the proceeding wherein Tractebel was granted certificate authorization to construct and operate its pipeline. The Settlement filed herein addresses, as between Tractebel and FGT only, some of the same operational issues raised in Docket No. RP04-249-000, but is not intended to address those issues as between Ocean Express and FGT. Therefore, since this filing brings a new matter before the Commission, it is assigned new Docket No. RP04-623-000. In addition, since this filing includes revisions to Tractebel's *pro forma* tariff, currently under review in Docket No. CP01-411-005, this filing is also assigned Docket No. CP01-411-006.

Marketing, LLC (TC Marketing). Tractebel also states its belief that although parties purchasing from TC Marketing may have an indirect interest in this filing, nothing in the Interconnection Agreement is inconsistent with the rights of such parties under FGT's tariff. Tractebel states that, as of the date of the filing, it received consents to the shortened comment period from the Commission's Trial Staff in Docket No. RP04-249, FGT, Florida Power & Light Company, Peoples Gas System, Tampa Electric Company and TC Marketing. The Commission finds that good cause has been shown for a shortened comment period. Accordingly, Initial Comments on the Settlement at issue in the instant Notice are due no later than October 12, 2004, and Reply Comments are due no later than October 22, 2004.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2615 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP04-408-000]

#### Transcontinental Gas Pipe Line Corporation; Notice of Application for Abandonment

October 6, 2004.

Take notice that on September 2, 2004 Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas, 77251, filed with the Federal Energy Regulatory Commission (FERC) an application under section 7(b) of the Natural Gas Act to abandon and amend for purposes of consolidation, in accordance with the provisions in section 22 of the General Terms and Conditions in its FERC Gas Tariff, certain service agreements under Transco's Rate Schedule GSS for Piedmont Natural Gas, Inc., as more fully described therein.

Transco's authorized contact person for this proceeding is Marg Camardello, Manager, Certificates and Tariffs, (713) 215-3380, P.O. Box 1396, Houston, Texas, 77251.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or a motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or to protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street; NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676, for TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on October 8, 2004.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2609 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP96-359-022]

#### Transcontinental Gas Pipe Line Corporation; Notice of Filing

October 7, 2004.

Take notice that on September 30, 2004, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Federal Energy Regulatory Commission a copy of an executed service agreement between Transco and Washington Gas Light Company under Transco's Rate Schedule FT that contains a negotiated rate for firm transportation service under Transco's Leidy East Expansion Project. The effective date of this service agreement and the negotiated rate is October 1, 2004.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2618 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket No. RP05-12-000]****Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff**

October 7, 2004.

Take notice that on October 1, 2004, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Twenty-First Revised Sheet No. 29, to become effective November 1, 2004.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call

(866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,  
Secretary.

[FR Doc. E4-2648 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket No. RP05-13-000]****Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff**

October 7, 2004.

Take notice that on October 1, 2004, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective October 1, 2004:

Thirty-Seventh Revised Sheet No. 27  
Twenty-Seventh Revised Sheet No. 28  
Fifty-First Revised Sheet No. 28A  
Thirty-First Revised Sheet No. 28C  
Fifty-Fourth Revised Sheet No. 50

Transco states that included in Appendices B through F attached to the filing are the explanations of the rate changes and details regarding the computation of the revised GSS, LSS, SS-2, FT-NT and S-2 rates.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>.

Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,  
Secretary.

[FR Doc. E4-2649 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket No. RP05-14-000]****Transwestern Pipeline Company; Notice of Tariff Filing**

October 7, 2004.

Take notice that on October 1, 2004, Transwestern Pipeline Company, LLC (Transwestern) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to reflect a change in name and corporate form. Transwestern further states that it has also tendered a cross-reference table in Appendix B for review of currently effective and pending tariff sheets compared with proposed tariff sheets. Transwestern states that in addition to the change in name and corporate form, Transwestern is also proposing several minor clean-up edits to its Tariff. Transwestern also states that all tariff changes are identified in Appendix B, with the corresponding redlined tariff sheets provided as Appendix C. Transwestern states that the revised tariff sheets reflect a name change that is planned to occur on November 1, 2004. Transwestern states on that date it plans to convert from a corporation to a limited liability company and will change its name to Transwestern Pipeline Company, LLC.

Transwestern states that copies of its transmittal letter and Appendix B and Appendix C have been served on all

affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2650 Filed 10-14-04; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP05-5-000]

#### Trunkline Gas Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

October 7, 2004.

Take notice that on October 1, 2004, Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff

sheets, to become effective November 1, 2004:

Fifth Revised Sheet No. 10  
Fifth Revised Sheet No. 11  
Fifth Revised Sheet No. 12  
Fifth Revised Sheet No. 13  
Fifth Revised Sheet No. 14  
Fifth Revised Sheet No. 15  
Fifth Revised Sheet No. 16  
Fifth Revised Sheet No. 17

Trunkline states that this filing is made in accordance with section 22 (Fuel Reimbursement Adjustment) of Trunkline's FERC Gas Tariff, Third Revised Volume No. 1, and that the purpose of the filing is to update the fuel reimbursement percentages proposed to be effective November 1, 2004.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call

(866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2627 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP05-8-000]

#### Viking Gas Transmission Company; Notice of Tariff Filing

October 7, 2004.

Take notice that on October 1, 2004, Viking Gas Transmission Company (Viking) tendered for filing to be part of its FERC Gas Tariff, First Revised Volume No. 1, Tenth Revised Sheet No. 5B, to become effective November 1, 2004.

Viking states that the purpose of this filing is to make Viking's semi-annual adjustment to its Fuel and Loss Retention Percentages (FLRP) pursuant to the Commission's Rules and Regulations, 18 CFR 154.403 (2003) and section 26 of the General Terms and Conditions of Viking's FERC Gas Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2630 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP05-6-000]

#### Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

October 7, 2004.

Take notice that on October 1, 2004, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fourth Revised Sheet No. 286, to become effective October 1, 2004.

Williston Basin states that it has revised the above-referenced tariff sheet of its tariff to include language allowing the option to exercise reasonable discretion to waive all, or part, of any late charge on a nondiscriminatory basis.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2628 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP05-7-000]

#### Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 7, 2004.

Take notice that on October 1, 2004, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective October 1, 2004:

Eighth Revised Sheet No. 374  
Tenth Revised Sheet No. 376

Williston Basin states that it has revised the above-referenced tariff sheets of its Tariff to add two new receipt points: Point ID No. 04015 (Baker Area Grasslands Mainline) to Williston Basin's Grasslands Pool; and, Point ID No. 01275 (Sidney Plant) to Williston Basin's MonDak Pool.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2629 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP04-620-000]

#### Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 7, 2004.

Take notice that on September 30, 2004, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fifth Revised Sheet No. 358I, to become effective September 30, 2004.

Williston Basin states that as of July 31, 2004 it had a zero balance in FERC Account No. 191. As a result, Williston Basin further states that it will neither refund nor bill its former sales customers for any amounts under the

conditions of Subsection No. 39.3.1 of its Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2643 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER98-855-004]

#### Wisconsin Electric Power Company; Notice of Compliance Filing

September 30, 2004.

Take notice that, on September 27, 2004, Wisconsin Electric Power

Company (Wisconsin Electric) submitted a compliance filing pursuant to the Commission's Order Implementing New Generation Market Power Analysis and Mitigation Procedures, issued on May 13, 2004, in Docket No. ER02-1406-001, *et al.*

Wisconsin Electric states that copies of the filing were served on parties on the official service list in Docket Nos. ER98-855-002 and 003.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 pm Eastern Time on October 18, 2004.

**Linda Mitry,**  
*Acting Secretary.*

[FR Doc. E4-2612 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP04-360-000]

#### Maritimes and Northeast Pipeline, L.L.C.; Notice of Telephone Technical Conference

October 6, 2004.

In an order issued on July 29, 2004,<sup>1</sup> the Commission directed staff to convene a technical conference to discuss Maritimes and Northeast Pipeline, L.L.C.'s proposed non-rate modifications to its tariff including, but not limited to, revisions to the fuel retainage percentage, revisions to the right of first refusal, and the proposed action alert. The technical conference was held on September 22, 2004.

A telephone technical conference will be held on Wednesday, October 13, 2004, beginning at 10 a.m. (EST) to further discuss issues concerning Maritimes' proposed modifications to its right of first refusal procedures, action alert, and accounting for its fuel tracker. The telephone number for the conference is 888-412-7888. The code is 2360313.

All interested parties and staff are permitted to call in. For further information please contact: David Faerberg at (202) 502-8275 or e-mail [david.farberg@ferc.gov](mailto:david.farberg@ferc.gov).

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E4-2614 Filed 10-14-04; 8:45 am]

BILLING CODE 6717-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7828-1]

### Proposed Consent Decree, Clean Air Act Citizen Suit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed consent decree; request for public comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree agreement, to address consolidated lawsuits filed by the Sierra Club. *Sierra Club v. Leavitt*, Nos. 1:02CV00946, 1:02CV00947 and 1:03CV02410 (D. D.C.). In May 2002 and November 2003, Sierra Club filed

<sup>1</sup> *Maritimes and Northeast Pipeline, L.L.C.*, 108 FERC ¶ 61,087 (2004).



lawsuits against EPA claiming that EPA had failed to carry out mandatory duties imposed by sections 112(d)(6) and 112(f)(2)(A) of the Act with respect to coke oven batteries and dry cleaners. Specifically, the complaints alleged that EPA had failed to determine within the deadlines established by the Act whether or not to revise technology-based standards issued for these source categories pursuant to sections 112(d)(8)(A) and 112(d)(2) to adopt more stringent technology-based standards or more stringent risk-based standards. Under the terms of the proposed consent decree, by March 31, 2005, EPA must make a final determination whether or not to amend the emission standards for coke oven batteries, and by April 28, 2006, EPA must make a final determination whether or not to amend the emission standards for dry cleaning facilities.

**DATES:** Written comments on the proposed consent decree must be received by November 15, 2004.

**ADDRESSES:** Submit your comments, identified by docket ID number OGC-2004-0009, online at <http://www.epa.gov/edocket> (EPA's preferred method); by e-mail to [oei.docket@epa.gov](mailto:oei.docket@epa.gov); mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

**FOR FURTHER INFORMATION CONTACT:** Steven Silverman, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. telephone: (202) 564-5523.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Additional Information About the Proposed Consent Decree**

The proposed consent decree addresses lawsuits alleging that EPA failed to carry out its mandatory duties under section 112(d)(6) and 112(f)(2) to determine whether or not to revise the so-called MACT ("maximum achievable control technology") standards for coke oven batteries and for dry cleaners by the deadlines established by the Act. Section 112(d)(6) requires that EPA

periodically review and revise as necessary, taking into account developments in practices, processes, and control technologies, MACT standards issued pursuant to section 112(d). Section 112(f)(2) requires that EPA evaluate on a prescribed schedule whether risks to human health or the environment remaining after promulgation of a MACT standard warrant revision of that standard.

Under the proposed consent decree EPA will conduct a rulemaking to review, and to revise as necessary the existing emission standards for coke oven batteries. (These are MACT standards established pursuant to section 112(d)(8)(A) of the Act.) The rulemaking will address determinations under both section 112(d)(6) and 112(f)(2). No later than March 31, 2005, EPA shall sign a final rule revising the emission standards for coke oven batteries or make a final determination that such standards are not required. (EPA has in fact proposed to amend the MACT standards for coke oven batteries and now is accepting comment on that proposal. See 69 FR 48337 (August 9, 2004).)

The proposed consent decree also requires that EPA will conduct a rulemaking to review, and to revise as necessary the existing emission standards for dry cleaning facilities. (These are MACT standards issued pursuant to section 112(d)(2) of the Act.) The rulemaking will address determinations under both section 112(d)(6) and 112(f)(2). No later than April 28, 2006, EPA shall sign a final rule revising emission standards for dry cleaning facilities or make a final determination that such standards are not required.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the consent decree should be withdrawn, the terms of the decree will be affirmed.

##### **II. Additional Information About Commenting on the Proposed Consent Decree**

###### *A. How Can I Get a Copy of the Consent Decree?*

EPA has established an official public docket for this action under Docket ID No. OGC-2004-0009 which contains a copy of the consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

###### *B. How and To Whom Do I Submit Comments?*

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment



period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: October 1, 2004.

**Lisa K. Friedman,**

*Associate General Counsel, Air and Radiation Law Office, Office of General Counsel.*

[FR Doc. 04-23154 Filed 10-14-04; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6656-6]

### Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564-7167 or <http://www.epa.gov/compliance/nepa/>

Weekly receipt of Environmental Impact Statements Filed October 4, 2004

Through October 8, 2004 Pursuant to 40 CFR 1506.9.

*EIS No. 040477, Final EIS, AFS, ID,* North Sheep Allotments—Sheep and Goat Allotment Management Plans, To Authorize Continued Sheep Grazing for Fisher Creek, Smiley Creek, North Fork-Boulder and Baker Creek Sheep and Goat Grazing Allotments, Sawtooth National Forest, Ketchum Ranger District, Sawtooth National Recreation Area, Blaine and Custer Counties, ID, Wait Period Ends: November 15, 2004, Contact: Carol Brown (208) 727-5000.

*EIS No. 040478, Draft EIS, FAA, PA,* Philadelphia International Airport Project, Proposed Runway 17-35 Extension Project, Funding, NPDES Permit and U.S. Army COE Section 404 Permit, Philadelphia, PA, Comment Period Ends: November 29, 2004, Contact: Susan McDonald (717) 730-2833.

*EIS No. 040479, Revised Draft EIS, JUS, AZ,* Programmatic EIS—Office of Border Patrol Operational Activities within the Border Areas of the Tucson and Yuma Sectors, Expansion of Operations of Technology-Based Systems, Completion and Maintenance of Approved Infrastructure, Cochise, Pima, Santa Cruz, and Yuma Counties, AZ, Comment Period Ends: November 29, 2004, Contact: Mark Doles (817) 886-6499.

*EIS No. 040480, Final EIS, USA, UT,* Activities Associated with Future Programs at U.S. Army Dugway Proving Ground, Implementation, Tooele and Jaub Counties, UT, Wait Period Ends: November 15, 2004, Contact: Nicholas J. Cavallaro (410) 278-1084.

*EIS No. 040481, Draft Supplement, AFS, AK,* Emerald Bay Timber Sale, Implementation, Additional Information on the Potential Effects of the Project Alternatives, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, AK, Comment Period Ends: November 29, 2004, Contact: John Natvig (605) 720-7710.

*EIS No. 040482, Draft EIS, FHW, PA,* U.S. 219 Improvements Project, Meyersdale to Somerset, SR 6219, Section 020, Funding, U.S. COE Section 404 Permit, Somerset County, PA, Comment Period Ends: November 30, 2004, Contact: James A. Cheatham (717) 221-3461.

*EIS No. 040483, Final EIS, FHW, MO,* MO-17 Transportation Improvement Project, South of Route O to South of Howell County Line Bridge Replacement with Approaches, Funding, U.S. COE Section 404

Permit, Shannon, Texas, and Howell Counties, MO, Wait Period Ends: November 15, 2004, Contact: Don Neumann (573) 636-7104.

*EIS No. 040484, Draft EIS, NIH, TX,* Galveston National Laboratory for Biodefense and Emerging Infectious Diseases Research Facility at the University of Texas Medical Branch, Construction, Partial Funding, Grant, Galveston, TX, Comment Period Ends: December 17, 2004, Contact: Valerie Nottingham (301) 496-7775.

*EIS No. 040485, Draft EIS, AFS, CO,* Vail Valley Forest Health Project, Proposal Landscape-Scale Vegetation Management and Fuels Reduction, White River National Forest, Holy Cross Ranger District, Eagle County, CO, Comment Period Ends: November 29, 2004, Contact: Peech Keller (970) 468-5400.

Dated: October 12, 2004.

**Ken Mittelholtz,**

*Environmental Protection Specialist, Office of Federal Activities.*

[FR Doc. 04-23152 Filed 10-14-04; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6656-7]

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act, as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564-7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 2, 2004 (69 FR 17403).

#### Draft EISs

ERP No. D-COE-K36140-CA Rating LO, Prado Basin Water Supply Feasibility Study, To Increase Conservation of Surplus Water at Prado Dam and Flood Control Basin, Orange County Water District, Orange, Riverside, and San Bernardino Counties, CA.

*Summary:* EPA supports the selection of Alternative 2 as the preferred alternative and recommended consideration of additional mitigation measures for habitat impacts.

ERP No. D-FRC-G03022-LA Rating EC2, Sabine Pass Liquefied Natural Gas (LNG) and Pipeline Project,

Construction and Operation LNG Import Terminal and Natural Gas Pipeline Facilities, Several Permits, Cameron Parish, LA.

**Summary:** EPA expressed environmental concerns and requested additional discussion in the FEIS on wetland mitigation, water quality and dredged material toxicity.

ERP No. DS-FHW-F40309-00 Rating EC2, MN-36/WI-64 St. Croix River Crossing Project, Construction of a New Crossing between the Cities of Stillwater and Oak Park Heights in Washington County, MN and the Town of St. Joseph in St. Croix County, WI, Updated and Additional Information, Funding, Washington County, MN and St. Croix County, WI.

**Summary:** EPA expressed environmental concerns based on uncertainty of the outcomes of the National Park Service section 7(a) evaluation under the National Wild and Scenic Rivers Act and the Section 106 process under the National Historic Preservation Act.

#### Final EISs

ERP No. F-FHW-F40418-IL Macomb Area Study, Construction from U.S. Route 67 (FAP-310) and Illinois Route 336 (FAP-315), City of Macomb, McDonough County, IL.

**Summary:** The Final EIS addressed EPA's concerns regarding rational for wildlife underpasses, use of native plants for mitigation and USFWS coordination. EPA requested information in the ROD regarding wetland mitigation ratios and stormwater management at the La Moine River crossings.

ERP No. F-FHW-K40246-CA CA-905 Freeway or Tollway Construction Project, Route Location, Adoption and Construction, Otay Mesa Port of Entry to I-805, Funding and U.S. Army COE Section 404 Permit Issuance, San Diego County, CA.

**Summary:** EPA supports the preferred alternative and conceptual mitigation plan.

ERP No. F-FHW-L40219-AK Gravina Access Project, Transportation Improvements between Revillagigedo Island and Gravina Island, Funding, Endangered Species Act 7, NPDES and U.S. Army COE Section 404 Permits Issuance, Ketchikan Gateway Borough, AK.

**Summary:** No formal comment letter was sent to the preparing agency.

ERP No. F-NOA-L64049-AK Bering Sea and Aleutian Islands King and Tanner Crab Fisheries and Fishery Management Plan, Implementation, United States Exclusive Economic Zone (EEZ) off Alaska.

**Summary:** No formal comment letter sent to the preparing agency.

Dated: October 12, 2004.

**Ken Mittelholtz,**

*Environmental Protection Specialist, Office of Federal Activities.*

[FR Doc. 04-23153 Filed 10-14-04; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7828-3]

### National Drinking Water Advisory Council's Water Security Working Group Meeting Announcement

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) announces the second public meeting of the Water Security Working Group (WSWG) of the National Drinking Water Advisory Council (NDWAC), which was established under the Safe Drinking Water Act. The purpose of this meeting is to provide an opportunity for the WSWG members to continue deliberations on principles and program elements for drinking water and wastewater (water sector) security programs, including a framework to assess and prioritize security enhancements; to initiate deliberations on incentives to encourage development of active and effective security programs in the water sector; and to initiate deliberations on measures of the performance of water security programs. Part of the meeting will be open to the public; an opportunity for public comment will be provided during that time. WSWG findings and recommendations will be provided to the NDWAC for their consideration. Three additional meetings of the WSWG are planned and will be announced in the near future. The WSWG anticipates providing findings and recommendations to the NDWAC in spring 2005.

**DATES:** The WSWG meeting is October 27-29, 2004. On October 27, 2004, the meeting is scheduled from 12:30 p.m. to 6 p.m., eastern time (ET). On October 28, 2004, the meeting is scheduled from 8 a.m. to 5:30 p.m., ET. On October 29, 2004, the meeting will begin at 8 a.m. and end at 2:30 p.m., ET.

**ADDRESSES:** The meeting will take place at Embassy Suite Crystal City, 1300 Jefferson Davis Hwy, Arlington, Virginia 22202. The telephone number for this hotel is (703) 979-9799 and the fax number is (703) 920-5947.

#### FOR FURTHER INFORMATION CONTACT:

Interested participants from the public should contact Marc Santora, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water, Water Security Division (Mail Code 4601-M), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460. Please contact Marc Santora at [santora.marc@epa.gov](mailto:santora.marc@epa.gov) or call 202-564-1597 to receive additional details.

#### SUPPLEMENTARY INFORMATION:

#### Closed and Open Parts of the Meeting

Parts of the meeting will be closed to the public to allow the WSWG an opportunity to discuss security-sensitive information relating to specific water sector vulnerabilities and security tactics. Only WSWG members, Federal resource personnel, facilitation support contractors and outside experts identified by the facilitation support contractors will attend closed meeting sessions. The WSWG is a working group of the NDWAC; it is not a Federal advisory committee and therefore not subject to the same public disclosure laws that govern Federal advisory committees. A general summary of the topics discussed during closed meetings and the individuals present will be included with the summary of the open portions of the WSWG meeting.

The meeting will be closed to the public on October 27, 2004. In addition, the WSWG may, as necessary, enter into closed sessions, late in the afternoon of October 28, 2004, immediately before lunch on October 29, 2004, and late in the day on October 29, 2004. If closed sessions are needed on October 28, 2004 or October 29, 2004, opportunities for public comment will be provided before any closed sessions begin.

#### Public Comment

An opportunity for public comment will be provided during the open part of the WSWG meeting. Oral statements will be limited to five minutes, and it is preferred that only one person present the statement on behalf of a group or organization. Written comments may be provided at the meeting or may be sent, by mail, to Marc Santora, Designated Federal Officer for the WSWG, at the e-mail address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

#### Special Accommodations

Any person needing special accommodations at this meeting, including wheelchair access, should contact Marc Santora, Designated Federal Officer, at the number or e-mail address listed in the **FOR FURTHER**

**INFORMATION CONTACT** section of this notice. Requests for special accommodations should be made at least five business days in advance of the WSWG meeting.

Dated: October 12, 2004.

**Cynthia C. Dougherty,**

*Director, Office of Ground Water and Drinking Water.*

[FR Doc. 04-23258 Filed 10-14-04; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection(s) Approved by Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Communications Commission has received approval from the Office of Management and Budget (OMB) for the public information collection(s): OMB Control Numbers: 3060-1077, Digital Channel Election for Television Broadcast Station: Pre-Election Certification Form, FCC Form 381; OMB 3060-1076, Digital Channel Election Form: First Round Election, FCC Form 382; OMB 3060-1075, Digital Channel Election Form: First Round Conflict Decision, FCC Form 383; OMB 3060-1074, Digital Channel Election Form: Second Round Election, FCC Form 384; OMB 3060-1073, Digital Channel Election Form: Second Round Conflict Decision, FCC Form 385; OMB 3060-1072, Digital Channel Election Form: Third Round Election, FCC Form 386.

**DATES:** Effective date for these public information collections is October 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Kim Matthews, Media Bureau, (202) 418-2120.

**SUPPLEMENTARY INFORMATION:** The Federal Communications Commission has received OMB approval for OMB Control Numbers: 3060-1072 through 3060-1077. The effective date for these public information collections is October 1, 2004. The expiration date is March 31, 2005.

Pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104-13, an agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no person shall be subject to a penalty for failing to comply with a collection of information subject to the

Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning these revised information collections should be directed to Leslie F. Smith, Federal Communications Commission, (202) 418-0217 or via the Internet at [Leslie.Smith@fcc.gov](mailto:Leslie.Smith@fcc.gov).

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04-23188 Filed 10-14-04; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL MARITIME COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Federal Maritime Commission.

**TIME AND DATE:** 10 a.m.—October 27, 2004.

**PLACE:** 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

**STATUS:** A portion of the meeting will be open to the public and the remainder of the meeting will be closed.

#### MATTERS TO BE CONSIDERED:

#### The Open Portion of the Meeting

1. Petition No. P3-03—*Petition of United Parcel Service, Inc., for Exemption Pursuant to Section 16 of the Shipping Act of 1984 to Permit Negotiation, Entry and Performance of Service Contracts*; Petition No. P5-03—*Petition of the National Customs Brokers and Forwarders Association of America, Inc., for Limited Exemption from Certain Tariff Requirements of the Shipping Act of 1984*; Petition No. P7-03—*Petition of Ocean World Lines, Inc., for a Rulemaking to Amend and Expand the Definition and Scope of "Special Contracts" to Include All Ocean Transportation Intermediaries*; Petition No. P8-03—*Petition of BAX Global, Inc., for Rulemaking*; Petition No. P9-03—*Petition of C.H. Robinson Worldwide, Inc., for Exemption Pursuant to Section 16 of the Shipping Act of 1984 to Permit Negotiation, Entry and Performance of Confidential Service Contracts*; Petition No. P1-04—*Petition of Danzas Corporation d/b/a Danmar Lines Ltd.; Danzas AEI Ocean Services and DHL Danzas Air and Ocean for Exemption from the Tariff Publishing Requirements of Section 8 of the Shipping Act of 1984, as Amended*; Petition No. P2-04—*Petition of BDP International, Inc., for Exemption from the Tariff Publishing Requirements of Section 8 of the Shipping Act of 1984, as amended*; Petition No. P4-04—

*Petition of FEDEX Trade Networks Transport & Brokerage, Inc., for Exemption from the Tariff Publishing Requirements of Sections 8 and 10 of the Shipping Act of 1984, as Amended.*

2. Draft Final Rule, Docket No. 03-15, Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984.

#### The Closed Portion of the Meetings

1. Petition No. P5-04—*Petition of American President Lines, Ltd. and APL Co. Pte. Ltd., for a Full Exemption from the First Sentence of Section 9(c) of the Shipping Act of 1984, as amended.*

**CONTACT PERSON FOR MORE INFORMATION:** Bryant L. VanBrakle, Secretary, (202) 523-5725.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 04-23224 Filed 10-13-04; 11:13 am]

**BILLING CODE 6730-01-M**

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Proposed Collections; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System

**SUMMARY:** Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

#### Request for comment on information collection proposals

The following information collections, which are being handled under this delegated authority, have

received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Comments must be submitted on or before December 14, 2004.

**ADDRESSES:** You may submit comments, identified by FR 28, FR 29a, b or FR 1373a,b by any of the following methods:

- Agency Web Site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include docket number in the subject line of the message.

- FAX: 202/452-3819 or 202/452-3102.

- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at [www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm](http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm) as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:** A copy of the proposed forms and

instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statements, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Cynthia Ayouch, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202-263-4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

**Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following reports:**

1. *Report title:* Application for Employment with the Board of Governors of the Federal Reserve System

*Agency form number:* FR 28

*OMB control number:* 7100-0181

*Frequency:* On occasion

*Reporters:* Employment applicants

*Annual reporting hours:* 2,500 hours

*Estimated average hours per response:* 1 hour

*Number of respondents:* 2,500

*General description of report:* This information collection is required to obtain a benefit (sections 10(4) and 11(1) of the Federal Reserve Act (12 U.S.C. Sec. 244 and 248(1)). The Board is required to treat the information collected on the Application as confidential pursuant to the requirements of the Privacy Act (5 U.S.C. Sec. 552a). Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. Sections. 552(b)(2) and (b)(6)).

*Abstract:* The Application collects information to determine the qualifications, suitability, and availability of applicants for employment with the Board. The Application asks about education, training, employment, and other information covering the period since the applicant left high school.

*Current Actions:* The Federal Reserve proposes to revise the Application for Employment with the Board of Governors of the Federal Reserve System (FR 28) to include the applicant's email address and cell phone number. In addition, the FR 28 would be modified to inform applicants that educational claims must be from an accredited school. The Federal Reserve proposes to modify the Applicant's Voluntary Self-Identification Form (FR 28s) to be consistent with the Office of

Management and Budget's (OMBs) Statistical Policy Directive No. 15, (Race and Ethnic Standards for Federal Statistics and Administrative Reporting). The Federal Reserve Board also proposes to revise the Research Assistant Candidate Survey of Interests (FR 28i), by modifying the areas of interest, changing the rating scale format, adding a section on software packages used by the candidate, and adding a line for the candidate's name.

2. *Report title:* Compensation and Salary Surveys

*Agency form number:* FR 29a, b, c

*OMB control number:* 7100-0290

*Frequency:* FR 29a, annually; FR 29b, on occasion; FR 29c, annually

*Reporters:* Employers considered competitors for Federal Reserve employees

*Annual reporting hours:* FR 29a, 150 hours; FR 29b, 50 hours

*Estimated average hours per response:*

FR 29a, 6 hours; FR 29b, 1 hour

*Number of respondents:* 35

*General description of report:* This information collection is voluntary (sections 10(4) and 11(1) of the Federal Reserve Act (12 U.S.C. 244 and 248(1)) and is given confidential treatment (5 U.S.C 552 (b)(4) and (b)(6)).

*Abstract:* The surveys collect information on salaries, employee compensation policies, and other employee programs from employers that are considered competitors for Federal Reserve employees. The data from the surveys primarily are used to determine the appropriate salary structure and salary adjustments for Federal Reserve employees.

*Current Actions:* The Federal Reserve proposes to discontinue the annual Compensation Trend Survey (FR 29c). The international consulting firm of Hay Management Consultants has conducted this survey, on behalf of the Federal Reserve, since 1991. However, since 2001, the Federal Reserve has relied on data published in other national compensation surveys. The Annual Salary Survey (FR 29a) and the ad hoc surveys related to salary and other employment issues (FR 29b), would not be revised.

3. *Report title:* Studies of Board Publications

*Agency form number:* FR 1373a,b

*OMB control number:* 7100-0301

*Frequency:* FR 1373a, two times per year; FR 1373b, eight times per year

*Reporters:* FR 1373a, community-based educators, key stakeholders, and other educators who have previously requested consumer education materials from the Federal Reserve; FR 1373b, current subscribers of the publications being surveyed.

*Annual reporting hours:* FR 1373a, 300 hours; FR 1373b, 746 hours.

*Estimated average hours per response:* FR 1373a, 30 minutes; FR 1373b, 15 minutes.

*Number of respondents:* FR 1373a, 400; FR 1373b, 517.

*General description of report:* This information collection is voluntary. The FR 1373a study is authorized pursuant to the Federal Trade Commission Improvement Act (15 U.S.C. § 57(a)); the FR 1373 b study is authorized pursuant to 12 U.S.C. § 248(i). The specific information collected is not considered confidential.

*Abstract:* The FR 1373a study allows the Federal Reserve to: 1) conduct periodic reviews and evaluations of the consumer education materials, and 2) develop and evaluate consumer education materials under consideration for distribution. The FR 1373b study helps Federal Reserve evaluate other Board publications. In addition, the Federal Reserve uses the FR 1373b data to help determine if it should continue to issue certain publications and, if so, whether the public would like to see changes in the method of information delivery, frequency, content, format, or appearance.

*Current Actions:* The Federal Reserve proposes to revise the FR 1373a by adding focus group or guided discussions once a year with three groups of fifteen respondents. Each discussion would take an estimated ninety minutes. The goal for such focused discussions would be to identify what issues consumers want addressed and how they would like to receive this information. The Federal Reserve would work with community groups or other appropriate stakeholders to recruit small groups of consumers to serve as voluntary respondents.

Board of Governors of the Federal Reserve System, October 8, 2004.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 04-23132 Filed 10-14-04; 8:45 am]

BILLING CODE 6210-01-S

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or

the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 8, 2004.

**Federal Reserve Bank of Minneapolis** (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

*DCNB Holding Company*, Clear Lake, South Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Deuel County National Bank, Clear Lake, South Dakota.

Board of Governors of the Federal Reserve System, October 8, 2004.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 04-23131 Filed 10-14-04; 8:45 am]

BILLING CODE 6210-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention Agency for Toxic Substances and Disease Registry

#### Senior Executive Service; Performance Review Board Members

**AGENCY:** Centers for Disease Control and Prevention (CDC), and Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** Title 5, U.S. Code, Section 4314 (c)(4) of the Civil Service Reform Act of 1978, Public Law 95-454, requires that appointment of Performance Review Board members be published in the **Federal Register**.

#### FOR FURTHER INFORMATION CONTACT:

Nancy Peterson, Atlanta Human Resources Center, Department of Health and Human Services, 4770 Buford Highway, Mailstop K-07, Atlanta, Georgia 30341-3724, telephone 770-488-1872.

**SUPPLEMENTARY INFORMATION:** The following persons will serve on the Performance Review Board which oversees the evaluation of performance appraisals of Senior Executive Service members of the Department of Health and Human Services in the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry: William H. Gimson, Chairperson; Stephen B. Blount, M.D., M.P.H.; Janet L. Collins, Ph.D.; Robert Delaney; Henry Falk, M.D.; Donna F. Stroup, Ph.D.; Stephen B. Thacker, M.D.

The Associate Director for Program Services, CDC, has been delegated the authority to sign general **Federal Register** notices for both the CDC and ATSDR.

Dated: October 7, 2004.

*James D. Seligman, Associate Director for Program Services Centers for Disease Control and Prevention (CDC).*

[FR Doc. 04-23146 Filed 10-14-04; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[60Day-05AB]

#### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-498-1210 or send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-E11, Atlanta, GA 30333 or send an e-mail to [omb@cdc.gov](mailto:omb@cdc.gov).

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

### Proposed Project

Public Health Injury Surveillance and Prevention Program—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Injury is the leading cause of death and disability among children and young adults. In 2000, more than 148,000 people died from injuries. Among them 43,354 died from motor-vehicle crashes; 29,350 died from suicide; 16,765 died from homicide; 13,322 died from unintentional falls; 12,757 from unintentional poisonings; 3,482 died from unintentional drowning; 3,377 died from fires. These external causes can often result in

Traumatic Brain Injury (TBI), if not in death. Each year, an estimated 1.5 million Americans sustain a TBI. As a consequence of these TBI injuries 230,000 people are hospitalized and survive; 50,000 people die; and 80,000 to 90,000 people experience the onset of long-term disability. An estimated 5.3 million Americans live with a permanent TBI-related disability. However, this estimate does not include people with "mild" TBI who are seen in emergency departments or outpatient encounters, nor those who do not receive medical care. The annual economic burden of TBI in the United States has been estimated at \$56.3 billion in 1995 dollars; however, human costs of the long-term impairments and disabilities associated with TBI are incalculable. Because many TBI related disabilities are not conspicuous deficits, they are referred to as the invisible or silent epidemic. These disabilities, arising from cognitive, emotional, sensory, and motor impairments, often permanently alter a person's ability to maximize daily life experiences and have profound effects on social and family relationships. To implement more effective programs to prevent these injuries, we need reliable data on their causes and risk factors. State surveillance data can be used to (1) identify trends in TBI incidence, (2) enable the development of cause-specific prevention strategies focused on

populations at greatest risk, (3) and monitor the effectiveness of prevention programs.

This project will develop and maintain injury surveillance programs, including those with a focus on TBI and emergency department surveillance for mild TBI. The goal of this program is to develop quality data that will (a) be useful to State injury prevention and control programs, (b) enable states to develop injury indicators, (c) enable estimates of TBI incidence and public health consequences and (d) facilitate the use of TBI surveillance data to link individuals with information about TBI services.

Program recipients will collect information from pre-existing state data sets to calculate injury indicators in their state. In addition, a small group of states will review and abstract medical records to obtain data for variables that address severity of injury, circumstances and etiology of injury, and early outcome of injury in a large representative sample of reported cases of TBI-related hospitalization and mild TBI-related emergency department visits. The abstracted data will be stripped of all identifying information before submitting to CDC. CDC will fund up to 12 state health departments. The state health departments will use standardized data elements to abstract data. There will be no cost to respondents.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden hours
State Health Departments .....	12	1000	1	12,000
Total .....	.....	.....	.....	12,000

Dated: October 8, 2004.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 04-23142 Filed 10-14-04; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30Day-04-0237]

### Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of

information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498-1210 or send an email to [omb@cdc.gov](mailto:omb@cdc.gov). Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

### Proposed Project

The 2005-2006 National Health and Nutrition Examination Survey (NHANES), OMB No. 0920-0237—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

NHANES programs produce descriptive statistics which measure the health and nutrition status of the general population. Through the use of questionnaires, physical examinations, and laboratory tests, NHANES studies the relationship between diet, nutrition and health in a representative sample of the United States. CDC uses NHANES to monitor the prevalence of chronic conditions and risk factors related to health such as asthma, osteoporosis, infectious diseases, diabetes, eye disease, high blood pressure, high cholesterol, obesity, smoking, drug and alcohol use, physical activity, environmental exposures, and diet. NHANES data are used to establish reference data for the general population against which health care providers can compare such patient characteristics as height, weight, and nutrient levels in

the blood. Data from NHANES can be compared to those from previous surveys to monitor changes in the health of the U.S. population. NHANES will also establish a national probability sample of genetic material for future genetic research for susceptibility to disease.

Users of NHANES data include: Congress; Federal agencies such as NIH, EPA, and USDA; private groups such as the American Heart Association; schools of public health; private businesses; individual practitioners; and

administrators. NHANES data are used to establish, monitor, and/or evaluate dietary guidelines, food fortification policies, environmental exposures, immunization guidelines and health education and disease prevention programs. The current submission requests approval through March 2007.

CDC, National Center for Health Statistics has conducted the National Health and Nutrition Examination Survey (NHANES) periodically since 1970, and continuously since 1999. Approximately 5,000 participants are

examined annually. Participants will receive an interview, a physical examination, a telephone dietary interview and a home allergen dust collection. This survey is completely voluntary and confidential.

Respondents are reimbursed for any out-of-pocket costs such as transportation to and from the examination center. There is no cost to respondents other than their time. The annualized burden is estimated to be 62,957 hours.

Respondent category	No. of respondents	No. of responses/ respondent	Avg. burden/ response (in hrs.)
1. Screening interview only .....	13,333	1	10/60
2. Screener, family, and sample person interviews only .....	300	1	1.17
3. Screener, family, and sample person interviews and MEC examination (including pilot studies) .....	5,180	1	5.9
4. Household dust collection .....	2,328	1	36/60
5. Food propensity questionnaire .....	3,350	1	30/60
6. Physical activity monitor .....	4,000	1	15/60
7. Second dietary recall interview .....	4,300	1	30/60
8. Follow-up and Special studies .....	4,000	1	5.9

Dated: October 8, 2004.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 04-23148 Filed 10-14-04; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30Day-04-0636]

#### Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498-1210 or send an e-mail to [omb@cdc.gov](mailto:omb@cdc.gov). Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

#### Proposed Project

State-based Evaluation of the Alert Notification Component of CDC's

Epidemic Information Exchange (Epi-X) Secure Public Health Communications Network (OMB No. 0920-0636)—Extension—Epidemiology Program Office (EPO), Centers for Disease Control and Prevention (CDC).

Great attention has been focused on improving secure public health communications networks for the dissemination of critical disease outbreak and/or bioterrorism-related events, which may have multi-jurisdictional involvement and cause disease and death within a short time-frame. A central component of the mission of the CDC's Epidemiology Program Office (EPO) is to strengthen the nation's public health infrastructure by coordinating public health surveillance at CDC and providing domestic and international support through scientific communications and terrorism preparedness and emergency response. The Office of Scientific and Health Communication's Epidemic Information Exchange (Epi-X) provides CDC and its state and local partners and collaborators with a secure public health communications network intended for routine and emergent information exchange in a secure environment.

The purpose of the information gathered during this notification proficiency testing exercise is to evaluate the extent to which new registrants and currently authorized users of the Epidemic Information Exchange (Epi-X) are able to utilize alert

notification functionality to minimize or prevent unnecessary injury or disease-related morbidity and mortality through the use of secure communications and rapid notification systems. In this case, notification alerts would be sent to targeted public health professionals through a "barrage" of office cell phone, home telephone, and pager calls to rapidly inform key health authorities from multidisciplinary backgrounds and multiple jurisdictions of evolving and critical public health information, and assist with the decision-making process. Presently, the necessity of this evaluation process is timely because of ongoing terrorism threats and acts perpetrated worldwide.

The survey information will be gathered through an online questionnaire format. The survey will help evaluate user comprehension solely with the targeted notification and rapid alerting functionalities of Epi-X. The questionnaire will consist of both closed- and open-ended items and will be administered through Zoomerang, an online questionnaire program, or as a last resort, by telephone. Approximately 6,000 Epi-X users from every state of the union will be asked to volunteer input (in a 5-10 question format) about their experiences using the alert notification functionalities of the Epi-X communications system. The estimated annualized burden is 167 hours.



Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hrs)
States .....	1000	1	10/60

Dated: October 8, 2004.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 04-23149 Filed 10-14-04; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30Day-04-0406]

#### Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498-1210 or send an e-mail to [omb@cdc.gov](mailto:omb@cdc.gov). Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

#### Proposed Project

State and Local Area Integrated Telephone Survey (SLAITS), OMB No. 0920-0406—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

The State and Local Area Integrated Telephone Survey (SLAITS) mechanism has been conducted since 1997. This is a request to continue the integrated and coordinated survey system for three years. This system is designed to collect needed health and welfare-related data at the national, state, and local levels. Using the random-digit-dial sampling frame from the ongoing National Immunization Survey (NIS) and Computer Assisted Telephone Interviewing (CATI), the State and Local Area Integrated Telephone Survey (SLAITS) has quickly collected and produced data to monitor many health-related areas including child and family well-being, access to care, program participation, and changes in health care coverage at the national and state levels. The first component of the next three-year period will be the National Survey of Children with Special Health Care Needs, which will provide data to be used for program planning and evaluation at the state and national levels.

For some SLAITS modules, questionnaire content is drawn from

existing surveys within the Department of Health and Human Services as well as other Federal agencies. Other questionnaire modules were developed specifically for SLAITS. Past modules include General Health, Children's Health, Child Well-Being and Welfare, Children with Special Health Care Needs (CSHCN), Asthma Prevalence and Treatment, Knowledge of Medicaid and the State Children's Health Insurance Program (SCHIP), Survey of Early Childhood Health, and HIV/STD Related Risk Behavior.

SLAITS has provided policy analysts, program planners, and researchers with high quality data for decision making and program assessment. For example, the module on Medicaid and SCHIP was prominently featured in a report to Congress on insuring children. The CSHCN module has been used by federal and state Maternal and Child Health Bureau Directors to evaluate programs and service needs. The American Academy of Pediatrics is using the module on early childhood health to advise pediatricians on patient care standards and to inform parents about the health and well-being of young children. There are no costs to respondents other than their time to participate. The estimated annualized burden is 52,734 hours.

Survey/questionnaire—children with special health care needs	Number of respondents	Number of responses per respondent	Average burden per response
<b>2005 Burden Estimates</b>			
Screener (child in HH) .....	592,126	1	.5/60
Screener (CSHCN) .....	129,487	1	5/60
Survey (CSHCN) .....	25,500	1	25/60
Survey—state Augmentation (CSHCN) .....	5,000	1	35/60
Survey (Referent sample) .....	3,000	1	25/60
Developmental work for future module:			
Screener .....	10,000	1	5/60
Survey .....	2,000	1	30/60
SLAITS website—button or permanent website submission link:			
Survey .....	100	1	3/60
<b>2006 Burden Estimates</b>			
Screener (child in HH) .....	592,126	1	.5/60
Screener (CSHCN) .....	129,487	1	5/60
Survey (CSHCN) .....	25,500	1	25/60
Survey—state Augmentation (CSHCN) .....	5,000	1	35/60
Survey (Referent sample) .....	3,000	1	25/60



Survey/questionnaire—children with special health care needs	Number of respondents	Number of responses per respondent	Average burden per response
Developmental work for future module:			
Screeners .....	10,000	1	5/60
Survey .....	2,000	1	30/60
SLAITS website—button or permanent website submission link:			
Survey .....	100	1	3/60
<b>2007 Burden Estimates</b>			
Screeners .....	589,847	1	5/60
Survey .....	102,000	1	25/60
Developmental work for future modules:			
Screeners .....	10,000	1	5/60
Survey .....	2,000	1	30/60
SLAITS website—button or permanent website submission link:			
Survey .....	100	1	3/60

Dated: October 8, 2004.

**Alvin Hall,**

*Director, Management Analysis and Services  
Office, Centers for Disease Control and  
Prevention.*

[FR Doc. 04–23150 Filed 10–14–04; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30Day–04II]

#### Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210 or send an e-

mail to [omb@cdc.gov](mailto:omb@cdc.gov). Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

#### Proposed Project

Evaluation of State Nutrition and Physical Activity Programs to Prevent Obesity and Other Chronic Diseases—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDHP), Centers for Disease Control and Prevention (CDC).

The “State Nutrition and Physical Activity Programs to Prevent Obesity and Other Chronic Diseases” project was established by CDC to prevent and control obesity and other chronic diseases by supporting States in the development and implementation of nutrition and physical activity interventions, particularly through population-based strategies such as policy-level changes, environmental supports and the social marketing process. The goal of the programs in this

project is to attain population-based behavior change such as increased physical activity and better dietary habits; this will likely lead to a reduction in the prevalence of obesity, and ultimately to a reduction in the prevalence of obesity-related chronic diseases.

The evaluation questions for “State Nutrition and Physical Activity Programs to Prevent Obesity and Other Chronic Diseases” have been designed to focus on three primary areas: (1) CDC training and technical assistance; (2) State plan development; and (3) State interventions. Within each of these primary evaluation areas, the program has identified specific evaluation questions that have been chosen for study. The evaluation questions will be asked of the funded states via a Web-based data collection system supported by an electronic database. This evaluation will take place every six months during the funding cycle. The proposed project will be conducted over a three-year period. There is no cost to the respondents. The total burden hours are 480.

Respondents	Number of respondents	Number responses per respondent	Average burden per response (in hrs.)
Funded State Programs .....	20	2	12

Dated: October 8, 2004.

**Alvin Hall,**

*Director, Management Analysis and Services  
Office, Centers for Disease Control and  
Prevention.*

[FR Doc. 04-23151 Filed 10-14-04; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

[Document Identifier: CMS-10109 and CMS-10114]

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**1. Type of Information Collection**  
*Request:* Extension of a currently approved collection; *Title of Information Collection:* Hospital Reporting Initiative—Hospital Quality Measures; *Use:* The purpose is to collect data to produce valid, reliable, comparable and salient quality measures to provide a potent stimulus for clinicians and providers to improve the quality of care they provide. This reporting initiative in which hospitals may participate is a significant step toward a more informed public and a means to sustain health care quality improvement. The data is currently being collected from hospitals by CMS. The hospitals submitting data have volunteered to participate in public reporting. This effort places no

additional data collection requirements or burdens on hospitals. Section 501(b) of the MMA offers monetary incentives for hospitals participating in reporting; *Form Number:* CMS-10109 (OMB#: 0938-0918); *Frequency:* Quarterly; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 4,000; *Total Annual Responses:* 16,000; *Total Annual Hours:* 238,000.

**2. Type of Information Collection**  
*Request:* New collection; *Title of Information Collection:* National Provider Identifier (NPI) Application and Update Form and Supporting Regulation in 45 CFR 142.408, 162.406, and 162.408; *Form No.:* CMS-10114 (OMB# 0938-NEW); *Use:* The form will be used by health care providers to apply for NPIs and to update the information collected from them whenever it changes.; *Frequency:* On occasion and/or one-time; *Affected Public:* Business or other for-profit, Not-for-profit institutions and Federal Government; *Number of Respondents:* 1,193,945; *Total Annual Responses:* 1,193,945; *Total Annual Hours:* 448,128.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at <http://www.cms.hhs.gov/regulations/prs/>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@hcfa.gov](mailto:Paperwork@hcfa.gov), or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer:

OMB Human Resources and Housing Branch, Attention: Christopher Martin, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 7, 2004.

**John P. Burke, III,**

*Paperwork Reduction Act Team Leader, CMS  
Reports Clearance Officer, Office of Strategic  
Operations and Regulatory Affairs, Division  
of Regulations Development and Issuances.*

[FR Doc. 04-23122 Filed 10-14-04; 8:45 am]

BILLING CODE 4120-03-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

[Document Identifier: CMS-10128, CMS-10112 and CMS-10068]

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**1. Type of Information Collection**  
*Request:* New collection; *Title of Information Collection:* Public Reporting on Quality Outcomes National Survey of Hospital Executives ("PRO QUO"); *Use:* CMS seeks to survey hospitals quality improvement executives in spring 2005 to assess awareness of CMS Hospital Quality Initiatives and related publicity, and to assess impact of these initiatives on hospitals and their quality improvement programs. Findings will be used to enhance CMS programs to assist hospitals in quality improvement. *Form Number:* CMS-10128 (OMB#: 0938-NEW); *Frequency:* Once; *Affected Public:* Not-for-profit institutions and business or other for-profit; *Number of Respondents:* 1,600; *Total Annual Responses:* 1,600; *Total Annual Hours:* 792.

**2. Type of Information Collection**  
*Request:* New collection; *Title of Information Collection:* Phone Surveys of Product/Service for Medicare Payment Validation and Supporting Regulations in 42 CFR 405.502; *Form No.:* CMS-10112 (OMB# 0938-NEW);

*Use:* The Phone Surveys of Product/Service for Medicare Payment Validation will be used to identify specific products/services provided to Medicare beneficiaries and the costs associated with the provision of those products/services. The information collected will be used to validate the Medicare payment amounts for those products/services and institute revisions of payment amounts where necessary. The respondents will be the companies that have provided the product/service under review to Medicare beneficiaries.; *Frequency:* On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 2,000; *Total Annual Responses:* 2,000; *Total Annual Hours:* 16,000.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Assessing the Division of Beneficiary Inquiry Customer Service's Performance for Written Responses; *Form No.:* CMS-10068 (OMB# 0938-0894); *Use:* The Division of Beneficiary Inquiry Customer Service (DBICS) will collect information several times during FY '04-'05 to assess the customer service provided via written responses. DBICS will conduct the written survey through mailings that will accompany actual responses. The envelopes will be sent by Release Clerks so that the actual writer has no knowledge that a particular response is being rated.; *Frequency:* Quarterly; *Affected Public:* Individuals or households; *Number of Respondents:* 2,872; *Total Annual Responses:* 2,872; *Total Annual Hours:* 287.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at <http://www.cms.hhs.gov/regulations/pra/>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@cms.hhs.gov](mailto:Paperwork@cms.hhs.gov), or call the Reports Clearance Office on (410) 786-1326.

Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room C5-14-03, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: October 7, 2004.

**John P. Burke, III,**

*Paperwork Reduction Act Team Leader,  
Office of Strategic Operations and Strategic  
Affairs, Division of Regulations Development  
and Issuances.*

[FR Doc. 04-23123 Filed 10-14-04; 8:45 am]

**BILLING CODE 4120-03-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Technical and Non-Financial Assistance to Health Centers: Perinatal/Patient Safety Pilot Health Disparities Collaborative Cooperative Agreement Announcement of Single Source Award

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Announcement of Single Source Award.

**SUMMARY:** The Health Resources and Services Administration (HRSA) announces the award of a single source cooperative agreement for \$1,700,000 to the Institute for Health Care Improvement. This award is for an 18 month project period beginning September 1, 2004. The purpose of this cooperative agreement is to pilot a Perinatal/Patient Safety Health Disparities Collaborative for health centers funded under section 330 of the Public Health Service (PHS) Act.

*Background:* The Institute for Health Care Improvement (IHI) is uniquely qualified. IHI is a private, non-profit organization leading the improvement of health care throughout the world. IHI is a catalyst for change, cultivating innovative concepts for improving patient care and implementing programs for putting those ideas into action. It is recognized as a leading force in the challenge to improve health status, clinical outcomes, access to high quality acceptable care, patient satisfaction and cost effectiveness in the health care arena. They have achieved this high level of standing among health professionals by developing and teaching the Breakthrough Series to leaders interested in improving the quality of medical care. The Breakthrough Series methodology facilitates rapid implementation of successful care models in many area of health care delivery.

Given the mission of IHI, its recognized leadership position in implementing improvements in health care delivery systems, and its experience in working with thousands

of health care providers, including health centers, HRSA believes that IHI is uniquely qualified and essential to assist the Agency in launching the pilot Perinatal/Patient Safety Health Disparities Collaborative in FY 2004.

#### FOR FURTHER INFORMATION CONTACT:

Additional information may be obtained from Ada Determan, HRSA/Bureau of Primary Health Care, 4350 East West Highway, 8th Floor, Bethesda, Maryland 20814; telephone: (301) 594-4358; fax: (301) 594-4081; e-mail: [Adeterman@hrsa.gov](mailto:Adeterman@hrsa.gov).

Dated: October 8, 2004.

**Elizabeth M. Duke,**

*Administrator.*

[FR Doc. 04-23184 Filed 10-14-04; 8:45 am]

**BILLING CODE 4165-15-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Notice of Senior Executive Service Performance Review Board Membership

The Health Resources and Services Administration (HRSA) announces the appointment of members to the HRSA Senior Executive Service (SES) Performance Review Board (PRB). This action is being taken in accordance with Title 5, U.S.C. 4314(c)(4), which requires notice of the appointment of members of performance review boards to be published in the **Federal Register**.

The function of the PRB is to ensure consistency, stability and objectivity in SES performance appraisals, and to make recommendations to the Administrator, HRSA, relating to the performance of senior executives in the Agency.

The following persons will serve on the HRSA SES Performance Review Board: Dennis P. Williams, Catherine A. Flickinger, Denise H. Geolot, Neil Sampson, Merle G. McPherson, Samuel Shekar, Stephen R. Smith, Marcia K. Brand, Kerry Nesseler, Katherine M. Marconi, Peter C. van Dyck, Deborah Parham, Mary J. Horner, J. Henry Montes, Steven A. Pelovitz, Douglas Morgan, James Macrae, A. Michelle Snyder, Patricia L. Mackey, Jon L. Nelson, and Kay Templeton Garvey.

For further information about the HRSA Performance Review Board, contact Ms. Wendy Ponton, HRSA Office of Administration and Financial Management, 5600 Fishers Lane, Room 14A20, Rockville, Maryland 20857.

Dated: October 8, 2004.

**Elizabeth M. Duke,**  
Administrator.

[FR Doc. 04-23185 Filed 10-14-04; 8:45 am]

BILLING CODE 4165-15-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these

documents, call the SAMHSA Reports Clearance Officer on (240) 276-1243.

#### Voluntary Customer Satisfaction Surveys To Implement Executive Order 12862 in the Substance Abuse and Mental Health Services Administration (SAMHSA)—(OMB No. 0930-0197)—Extension

Executive Order 12862 directs agencies that “provide significant services directly to the public” to “survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.” SAMHSA provides significant services directly to the public, including treatment providers and State substance abuse and mental health agencies, through a range of mechanisms, including publications, training, meetings, technical assistance and Web sites. Many of these services are focused on information

dissemination activities. The purpose of this submission is to extend the existing generic approval for such surveys.

The primary use for information gathered is to identify strengths and weaknesses in current service provisions by SAMHSA and to make improvements that are practical and feasible. Several of the customer satisfaction surveys expected to be implemented under this approval will provide data for measurement of program effectiveness under the Government Performance and Results Act (GPRA). Information from these customer surveys will be used to plan and redirect resources and efforts to improve or maintain a high quality of service to health care providers and members of the public. Focus groups may be used to develop the survey questionnaire in some instances.

The estimated annual hour burden is as follows:

Type of data collection	Number of respondents	Responses/ respondent	Hours/ response	Total hours
Focus groups .....	150	1	2.50	375
Self-administered, mail, telephone and e- mail surveys .....	45,000	1	.33	14,850
Total .....	45,150			15,225

Written comments and recommendations concerning the proposed information collection should be sent by November 15, 2004 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: (202) 395-6974.

Dated: October 7, 2004.

**Anna Marsh,**  
Executive Officer, SAMHSA.

[FR Doc. 04-23145 Filed 10-14-04; 8:45 am]

BILLING CODE 4162-20-P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4901-N-42]

### Federal Property Suitable as Facilities to Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Kathy Burruss, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-1234; TTY number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v.*

*Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for “off-site use only” recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Heather Ranson, Division of Property Management, Program Support Center, HHS, room 5B-17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the

interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501-0084; NAVY: Mr. Charles C. Cocks, Department of the Navy, Real Estate Policy Division, Facilities Engineering command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374-5065; (202) 685-9200; (These are not toll-free numbers).

Dated: October 7, 2004.

**Mark. R. Johnston,**

*Director, Office of Special Needs Assistance Programs.*

**Title V, Federal Surplus Property Program  
Federal Register Report For 10/15/2004**

**Suitable/Available Properties**

*Buildings (by State)*

Colorado

Western Montrose Hangar

Interstate 35

Montrose Co: CO 81401-

Landholding Agency: GSA

Property Number: 54200440001

Status: Excess

Comment: 60 x120 airport hangar, off-site use only

GSA Number: 7-B-CO-0624

Oklahoma

Jay Federal Building

210 S 5th Street

Jay Co: Delaware OK 74346-

Landholding Agency: GSA

Property Number: 54200440002

Status: Surplus

Comment: 10153 sq. ft., most recent use—office, 49% occupied until December 2006

GSA Number: 7-G-OK-0565

**Unsuitable Properties**

*Buildings (by State)*

Idaho

3 Bldgs.

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Location: TRA603, TRA604, TRA610

Landholding Agency: Energy

Property Number: 41200430089

Status: Excess

Reason: Secured Area

Bldg. TAN611

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200430090

Status: Excess

Reason: Secured Area

5 Bldgs.

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Location: TRA626, TRA635, TRA642,

TRA648, TRA654

Landholding Agency: Energy

Property Number: 41200430091

Status: Excess

Reason: Secured Area

Bldg. TAN655

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200430092

Status: Excess

Reason: Secured Area

3 Bldgs.

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Location: TRA657, TRA661, TRA668

Landholding Agency: Energy

Property Number: 41200430093

Status: Excess

Reason: Secured Area

Bldg. TAN711

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200430094

Status: Excess

Reason: Secured Area

6 Bldgs.

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Location: CPP602-CPP606, CPP609

Landholding Agency: Energy

Property Number: 41200430095

Status: Excess

Reason: Secured Area

5 Bldgs.

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Location: CPP611-CPP614, CPP616

Landholding Agency: Energy

Property Number: 41200430096

Status: Excess

Reason: Secured Area

4 Bldgs.

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Location: CPP621, CPP626, CPP630, CPP 639

Landholding Agency: Energy

Property Number: 41200430097

Status: Excess

Reason: Secured Area

4 Bldgs.

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Location: CPP641, CPP644, CPP645, CCP649

Landholding Agency: Energy

Property Number: 41200430098

Status: Excess

Reason: Secured Area

Bldgs. CPP651-CPP655

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200430099

Status: Excess

Reason: Secured Area

Bldgs. CPP659-CPP663

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200440001

Status: Excess

Reason: Secured Area

Bldgs. CPP666, CPP668

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200440002

Status: Excess

Reason: Secured Area

3 Bldgs.

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Location: CPP674, CPP675, CPP679

Landholding Agency: Energy

Property Number: 41200440003

Status: Excess

Reason: Secured Area

3 Bldgs.

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Location: CPP684, CPP687, CPP688

Landholding Agency: Energy

Property Number: 41200440004

Status: Excess  
Reason: Secured Area  
Idaho  
7 Bldgs.  
Idaho National Eng & Env Lab  
Scoville Co: Butte ID 83415—  
Location: CPP690, CPP692, CPP694, CPP696—  
CPP699  
Landholding Agency: Energy  
Property Number: 41200440005  
Status: Excess  
Reason: Secured Area  
3 Bldgs.  
Idaho National Eng & Env Lab  
Scoville Co: Butte ID 83415—  
Location: CPP701, CPP701A, CPP708  
Landholding Agency: Energy  
Property Number: 41200440006  
Status: Excess  
Reason: Secured Area  
Bldgs. 711, 719A  
Idaho National Eng & Env Lab  
Scoville Co: Butte ID 83415—  
Landholding Agency: Energy  
Property Number: 41200440007  
Status: Excess  
Reason: Secured Area  
4 Bldgs.  
Idaho National Eng & Env Lab  
Scoville Co: Butte ID 83415—  
Location: CPP724—CPP726, CPP728  
Landholding Agency: Energy  
Property Number: 41200440008  
Status: Excess  
Reason: Secured Area  
New York  
Woodhaven Housing  
Park Drive  
Rome Co: NY 13440—  
Landholding Agency: GSA  
Property Number: 54200440003  
Status: Surplus  
Reason: Extensive deterioration  
GSA Number: 1—D—NY—0831—C  
[FR Doc. 04—22966 Filed 10—14—04; 8:45 am]  
**BILLING CODE 4210—29—M**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Receipt of Applications for Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications for permit.

**SUMMARY:** The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

**DATES:** Written data, comments or requests must be received by November 15, 2004.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the

Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358—2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone 703/358—2104.

#### SUPPLEMENTARY INFORMATION:

##### Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (**ADDRESSES** above).

##### PRT-093272

*Applicant:* Thomas L. Scott, Wrightsville, PA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

##### PRT-093281

*Applicant:* George R. Fusner, Jr., Brentwood, TN

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

##### PRT-092526

*Applicant:* Rosamond Gifford Zoo at Burnet Park, Syracuse, NY

The applicant requests a permit to export semen samples from captive held Asian elephant (*Elephas maximus*) to the University of Ontario, Guelph, Ontario, Canada for the purpose of scientific research.

##### PRT-093171

*Applicant:* William L. Heubaum, Yankton, SD

The applicant requests a permit to import the sport-hunted trophy of one male black-faced impala (*Aepyceros melampus petersi*) taken in Namibia, for

the purpose of enhancement of the survival of the species.

##### PRT-091943

*Applicant:* Clyde R. Robinson, Jr., Ballston Spa, NY

The applicant requests a permit to import three pair of captive hatched Hawaiian ducks (*Anas wyvilliana*) for the purpose of captive propagation.

##### PRT-094332

*Applicant:* Arizona State University/ Department of Anthropology, Tempe, AZ

The applicant requests a permit to authorize the import of biological samples from wild, captive-held, and captive-born chimpanzees (*Pan troglodytes*), pygmy chimpanzees (*Pan paniscus*), gorilla (*Gorilla gorilla*), and orangutan (*Pongo pygmaeus*) from various countries for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

##### PRT-090787, 090788 to 090803.

*Applicant:* Feld Entertainment, Vienna, VA

The applicant requests permits to import seven male and nine female bengal tigers (*Panthera tigris*) for the purpose of enhancement of the species through conservation education. The permit numbers and animals are 090787—Sahib, 090788—Calcutta, 090790—Lola, 090791—Mysore, 090792—Khan, 090793—Royal, 090794—Gorg, 090795—Isa, 090796—Savona, 090797—Zambra, 090798—Susy, 090799—Sultan, 090800—Lilly, 090801—Ayora, 090802—Bali, 090803—Sultan. This notification covers activities to be conducted by the applicant over a three-year period and the re-export of any potential progeny born while within the United States. The re-export of the tigers will be published at a later date.

##### Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be

appropriate. The holding of such a hearing is at the discretion of the Director.

**PRT-093627**

*Applicant:* William D. Hober, Easton, CT

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Foxe Basin polar bear population in Canada prior to February 18, 1997, for personal use.

**PRT-092340**

*Applicant:* Guy P. Ferraro, Union Beach, NJ

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Viscount Melville Sound polar bear population in Canada for personal use on September 7, 2004, (69 FR 54149).

Dated: October 1, 2004.

**Michael L. Carpenter,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 04-23129 Filed 10-14-04; 8:45 am]

**BILLING CODE 4310-55-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**Emergency Exemption: Issuance of Permit for Endangered Species**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of emergency issuance of permit for endangered species.

**SUMMARY:** The following permit was issued.

**ADDRESSES:** Documents and other information submitted for this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written

request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358-2104 or fax 703/358-2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone 703/358-2104.

**SUPPLEMENTARY INFORMATION:** On September 24, 2004, the U.S. Fish and Wildlife Service (Service) issued a permit (PRT-094219) to the Lincoln Park Zoological Park, Chicago, IL, to import tissue samples from a male chimpanzee (*Pan troglodytes*) which died in the wild in the Gombe Stream Reserve, Tanzania, for the purpose of scientific research to determine the cause of death and possible veterinary intervention required. This action was authorized under Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). The Service determined that an emergency affecting the health and life of the remaining chimpanzee population of the Gombe Stream Reserve existed, and that no reasonable alternative was available to the applicant for the following reasons.

The Lincoln Park Zoo requested a permit to import multiple tissue samples from a male chimpanzee which recently died in the Gombe Stream Reserve, Tanzania for emergency and ongoing health/disease evaluation purposes. Samples will be utilized exclusively for diagnostic and scientific purposes. The specimens will be used to run diagnostics tests to determine the cause of death of the animal that died. Additional animals appear to be affected with similar symptoms as the animal which died and the necessary diagnostic testing is not available in Africa to adequately and quickly diagnose the pathogen or pathogens involved. The determination of the cause of the illness

and possible treatment as quickly as possible will benefit the chimpanzee population in the wild.

Dated: October 1, 2004.

**Michael L. Carpenter,**

*Acting Chief, Branch of Permits—International Division of Management Authority.*

[FR Doc. 04-23130 Filed 10-14-04; 8:45 am]

**BILLING CODE 4310-55-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**Issuance of Permits**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance of permits for marine mammals.

**SUMMARY:** The following permits were issued.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358-2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone 703/358-2104.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein.

**Marine Mammals**

Permit number	Applicant	Receipt of application <b>Federal Register</b> notice	Permit issuance date
041309 .....	Marine Mammals Management .....	69 FR 45343; July 29, 2004 .....	August 31, 2004

Dated: October 1, 2004.

**Michael L. Carpenter,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 04-23128 Filed 10-14-04; 8:45 am]

**BILLING CODE 4310-55-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**Aquatic Nuisance Species Task Force Northeast Regional Panel Meeting**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a meeting of the Aquatic Nuisance

Species (ANS) Task Force Northeast Regional Panel. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION**.

**DATES:** The Northeast Regional Panel will meet from 1 p.m. to 5 p.m. Tuesday, November 9, 2004, and 8:30 a.m. to 4 p.m. on Wednesday, November 10, 2004. Minutes of the meeting will be available for public inspection during

regular business hours, Monday through Friday.

**ADDRESSES:** The Northeast Regional Panel meeting will be held at the Gideon Putnam Hotel and Conference Center, 24 Gideon Putnam Road, Saratoga Springs, NY 12866. Phone 518-226-4700. Minutes of the meeting will be maintained in the office of Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, Suite 322, 4401 North Fairfax Drive, Arlington, Virginia 22203-1622.

**FOR FURTHER INFORMATION CONTACT:** Michele Tremblay, Northeast Panel Coordinator, Nature Source Communications, P.O. Box 3019, Boscawen, NH, 03303, 603-796-2615, or Everett Wilson, Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service at 703-358-2148.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Aquatic Nuisance Species Task Force Northeast Regional Panel. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. The Northeast Regional Panel was established by the ANS Task Force in 2001 and is comprised of representatives from Federal, State, and local agencies and from private environmental and commercial interests.

The purpose of the Panel is to advise and make recommendations to the Aquatic Nuisance Species Task Force on issues relating to the Northeast region of the United States that includes: Connecticut, Massachusetts, Maine, New Hampshire, New York, Rhode Island and Vermont. Responsibilities of the Panel include: a. Identifying priorities for the Northeast Region with respect to aquatic nuisance species; b. Making recommendations to the Task Force regarding actions to carry out aquatic invasive species programs. c. Assisting the Task Force in coordinating Federal aquatic nuisance species program activities in the Northeast region; d. Coordinating, where possible, aquatic invasive species program activities in the Northeast region that are not conducted pursuant to the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (as amended, 1996); e. Providing advice to public and private individuals and entities concerning methods of controlling aquatic nuisance species; and f. Submitting an annual report describing activities within the Western region related to aquatic nuisance

species prevention, research, and control.

The Northeast Regional Panel will discuss several topics at this meeting including: updates from both the ANS Task Force and the National Invasive Species Council, and updates from other groups including State and Regional updates; committee break-out planning sessions and updates; New York State highlights; research priorities, progress on the rapid assessment, the New Hampshire outreach pilot program; the pet industry panel, and a feature on sea lamprey including management strategies in New York.

Dated: September 22, 2004.

**M.A. Parker,**

*Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries & Habitat Conservation.*

[FR Doc. 04-23178 Filed 10-14-04; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Notice of Meetings of the Klamath River Basin Fisheries Task Force

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public. The purpose of the meeting is to continue providing recommendations from the affected interests to the Department of the Interior on implementation of their program to restore anadromous fisheries, including salmon and steelhead, of the Klamath River in California and Oregon.

**DATES:** The first meeting will be from 9 a.m. to 5 p.m. on February 9, 2005, and from 8 a.m. to 1 p.m. on February 10, 2005. The second meeting will be from 9 a.m. to 5 p.m. on June 15, 2005, and from 8 a.m. to 1 p.m. on June 16, 2005. The third meeting will be from 9 a.m. to 5 p.m. on October 19, 2005, and from 8 a.m. to 1 p.m. on October 20, 2005.

**ADDRESSES:** The first meeting will be held at the Elk Valley Rancheria, 2500 Howland Hill Road, Crescent City, California. The second meeting will be held at the Convention Center, Best Western Miner's Inn, 112 E. Miner Street, Yreka, California. The third

meeting will be held at the Shilo Inn, 2500 Almond Street, Klamath Falls, Oregon.

**FOR FURTHER INFORMATION CONTACT:** Phil Detrich, Field Supervisor, U.S. Fish and Wildlife Service, 1829 South Oregon Street, Yreka, California 96097, telephone (530) 842-5763.

**SUPPLEMENTARY INFORMATION:** For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639)

Dated: October 8, 2004.

**John Engbring,**

*Deputy Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.*

[FR Doc. 04-23141 Filed 10-14-04; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WY-920-1320-EL, WYW151634]

#### Notice of Competitive Coal Lease Sale, Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of competitive coal lease sale.

**SUMMARY:** Notice is hereby given that certain coal resources in the West Hay Creek Tract described below in Campbell County, WY, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

**DATES:** The lease sale will be held at 10 a.m., on Wednesday, November 17, 2004. Sealed bids must be submitted on or before 4 p.m., on Tuesday, November 16, 2004.

**ADDRESSES:** The lease sale will be held in the First Floor Conference Room (Room 107), of the BLM Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003. Sealed bids must be submitted to the Cashier, BLM Wyoming State Office, at the address given above.

**FOR FURTHER INFORMATION CONTACT:** Julie Weaver, Land Law Examiner, or Robert Janssen, Coal Coordinator, at 307-775-6260, and 307-775-6206, respectively.

**SUPPLEMENTARY INFORMATION:** This coal lease sale is being held in response to a lease by application (LBA) filed by Triton Coal Company, LLC. The Federal coal tract being considered for sale is adjacent to the Buckskin Mine operated



by Triton Coal Company, LLC. Triton Coal Company, LLC, is a wholly owned subsidiary of Vulcan Intermediary, LLC. The coal resources to be offered consist of all reserves recoverable by surface mining methods in the following-described lands located 11 miles north of Gillette, Wyoming, in north-central Campbell County approximately two miles east of U.S. Highway 14/16, four miles west of State Highway 59 and crossed by Hay Creek. The BLM has increased the size of the LBA by approximately 83.06 acres along the northern and southeastern boundary in order to maximize economic recovery and to avoid a potential bypass of federal coal. The legal description for the property is as follows:

T. 52 N., R. 72 W., 6th P.M., Wyoming;  
 Sec. 17: Lots 5 (S $\frac{1}{2}$ ), 6 (S $\frac{1}{2}$ ), 7 (S $\frac{1}{2}$ ), 8 (S $\frac{1}{2}$ ), 9–14;  
 Sec. 18: Lots 12 (SE $\frac{1}{4}$ ), 13 (E $\frac{1}{2}$ ), 20 (E $\frac{1}{2}$ );  
 Sec. 19: Lots 5 (E $\frac{1}{2}$ ), 12 (E $\frac{1}{2}$ ), 13 (E $\frac{1}{2}$ ), 20 (E $\frac{1}{2}$ );  
 Sec. 20: Lots 2 (W $\frac{1}{2}$ , W $\frac{1}{2}$ E $\frac{1}{2}$ ), 3–6, 7 (W $\frac{1}{2}$ , W $\frac{1}{2}$ E $\frac{1}{2}$ ), 10 (W $\frac{1}{2}$ , W $\frac{1}{2}$ E $\frac{1}{2}$ ), 11–14, 15 (W $\frac{1}{2}$ , W $\frac{1}{2}$ E $\frac{1}{2}$ ).

Containing 921.1575 acres, more or less.

The tract is adjacent to Federal coal leases to the south and east, to a State of Wyoming coal lease to the northeast, and to an imbedded private lot all controlled by the Buckskin Mine. It is also adjacent to additional unleased Federal coal to the north and west.

All of the acreage offered has been determined to be suitable for mining. Hay Creek is not expected to qualify as an alluvial valley floor and so can be diverted, mined out, and restored. Other features such as pipelines can be moved to permit coal recovery. Finally, numerous oil and/or gas wells have been drilled on the tract. The estimate of the bonus value of the coal lease will include consideration of the future production from these wells. An economic analysis of this future income stream will determine whether a well is bought out and plugged prior to mining or re-established after mining is completed. All of the surface estate is controlled by the Buckskin Mine.

The tract contains surface mineable coal reserves in the Wyodak seam currently being recovered in the adjacent, existing mines. On the tract, the Wyodak seam is divided into numerous seams and splits. The primary seam is the Canyon seam which varies from about 54–68 feet thick on the LBA. A shallower secondary seam, the Anderson, varies from about 16–19 feet thick on the LBA. A thin split above the Anderson reaches 5 feet thick in places on the LBA. A thin seam between the Anderson and Canyon varies between 5–10 feet thick on the LBA.

Three additional seam/splits below the Canyon occur over limited areas on the LBA and range from 0–9 feet thick. The overburden depths range from about 32–275 feet thick. The interburden between the upper split and the Anderson ranges from 4–6 feet thick, between the Anderson and the middle seam from 14–20 feet thick, between the middle seam and the Canyon seam from 6–37 feet thick, and between the lower three split/seams from 0–40 feet thick where they occur on the LBA.

The tract contains an estimated 142,698,000 tons of mineable coal. This estimate of mineable reserves includes the Canyon and Anderson seams as well as the other seams/splits mentioned above, but does not include any tonnage from localized seams or splits containing less than 5 feet of coal. The total mineable stripping ratio (BCY/Ton) of the coal is about 2.0:1. Potential bidders for the LBA should consider the recovery rate expected from thick seam and multiple seam mining.

The West Hay Creek LBA coal is ranked as subbituminous C. The overall average quality on an as-received basis is 8346 BTU/lb with about 0.28 percent sulfur and 1.75 percent sodium in the ash. These quality averages place the coal reserves near the low end of the range of coal quality currently being mined in the Wyoming portion of the Powder River Basin.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid equals or exceeds the BLM's estimate of the fair market value of the tract. The minimum bid for the tract is \$100 per acre or fraction thereof. No bid that is less than \$100 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt requested, or be hand delivered. The Cashier will issue a receipt for each hand-delivered bid. Bids received after 4 p.m., on Tuesday, November 16, 2004, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value of the tract will be determined by the Authorized Officer after the sale. The lease issued as a result of this offering will provide for payment of an annual rental of \$3.00 per acre, or fraction thereof, and of a royalty payment to the United States of 12.5 percent of the value of coal produced by strip or auger mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are available

from the BLM Wyoming State Office at the addresses above. Case file documents, WYW151634, are available for inspection at the BLM Wyoming State Office.

Dated: August 12, 2004.

**Alan Rabinoff,**

*Deputy State Director, Minerals and Lands.*

[FR Doc. 04–22556 Filed 10–14–04; 8:45 am]

BILLING CODE 4310–22–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NV–050–1430–ER]

#### Notice of Availability of the Final Supplemental Environmental Impact Statement for the Flood Control Master Plan, Clark County Regional Flood Control District, NV

**AGENCY:** Bureau of Land Management, Interior.

**COOPERATING AGENCY:** U.S. Army Corps of Engineers, Sacramento District.

**ACTION:** Notice of availability.

**SUMMARY:** Pursuant to the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management (BLM) has prepared and completed the Final Supplemental Environmental Impact Statement for the Flood Control Master Plan, Clark County Regional Flood Control District, approved June 4, 1991, by Record of Decision.

**DATES:** The FSEIS will be available to the public for a 30-day period prior to the Record of Decision (ROD) being finalized. The date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register** initiates the 30-day availability period.

**ADDRESSES:** You may submit comments by any of the following methods:

- Web site: <http://www.blm.nv.gov>.
- E-mail: [agarcia@nv.blm.gov](mailto:agarcia@nv.blm.gov).
- Fax: (702) 515–5010.
- Mail: Bureau of Land Management, Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, NV 89130–2301.

Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of

organizations or businesses, will be available for public inspection in their entirety. Copies of the Final Supplemental Environmental Impact Statement for the Flood Control Master Plan, Clark County Regional Flood Control District are available in the Las Vegas Field Office at the above address.

**FOR FURTHER INFORMATION CONTACT:** For further information and/or to have your name added to our mailing list, contact Adrian A. Garcia, BLM, Las Vegas Field Office, Telephone (702) 515-5089; e-mail [agarcia@nv.blm.gov](mailto:agarcia@nv.blm.gov), or Jeff Steinmetz at (702) 515-5097; e-mail [jsteinme@nv.blm.gov](mailto:jsteinme@nv.blm.gov).

**SUPPLEMENTARY INFORMATION:** This FSEIS was prepared to describe the potential environmental effects of construction and operation of flood control facilities encompassing private and public lands within the Las Vegas Valley and Boulder City by the Clark County Regional Flood Control District for the next ten-year period. Due to changes in Federal regulations, regional growth, flooding history, and CCRFCD project changes and objectives that have occurred since 1991, this FSEIS was also prepared for the CCRFCD's Master Plan to update the 1991 FEIS. This document also assesses impacts associated with the implementation of the Master Plan and subsequent updates.

The changing needs and interests of the public and the growth within the Las Vegas Valley necessitates a revision to the Flood Control Master Plan FEIS. Preliminary issues and management concerns have been identified by the BLM and CCRFCD, their consultant, and other agencies, and represent the BLM's current information on existing issues and management concerns. The major issue themes that will be addressed in the SEIS include: Impacts to surface water hydrology and water quality; protection of Federally-listed species, State-listed species, and BLM sensitive species; minimizing impacts to air quality; minimizing visibility impacts; balancing conflicting and compatible land uses; protection of cultural and paleontological resources; cumulative impacts of the project; and the creation of a new project-specific analysis procedure for future flood control facilities.

Dated: August 31, 2004.

**Sharon DiPinto,**

*Assistant Field Manager, Division of Lands.*

[FR Doc. 04-23196 Filed 10-14-04; 8:45 am]

**BILLING CODE 4310-HC-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Native American Graves Protection and Repatriation Review Committee: Meeting

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** This is notice of a meeting of the Native American Graves Protection and Repatriation Review Committee. The next Review Committee meeting is a public teleconference on November 2, 2004, to discuss proposed regulations regarding future applicability of the statute (43 CFR 10.13), agenda items for a Review Committee meeting tentatively scheduled for March 14-15, 2005, in Hawaii, and to receive presentations and statements by Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and the public.

**DATES:** The meeting via teleconference is on November 2, 2004, from 2 p.m., until approximately 4 p.m., e.s.t.

**FOR FURTHER INFORMATION CONTACT:** Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee, telephone (202) 354-2206, facsimile (202) 371-5197, e-mail [tim\\_mckeown@nps.gov](mailto:tim_mckeown@nps.gov).

#### SUPPLEMENTARY INFORMATION:

**Authority:** Native American Graves Protection and Repatriation Act (NAGPRA, 25 U.S.C. 3001 *et seq.*) and Federal Advisory Committee Act (FACA, 5 U.S.C. Appendix).

#### General Information

The Review Committee was established by NAGPRA. Review Committee members are appointed by the Secretary of the Interior. The Review Committee is responsible for monitoring the NAGPRA inventory and identification process; reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items; facilitating the resolution of disputes; compiling in inventory of culturally unidentifiable human remains and recommending actions for developing a process for disposition of such remains; consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the Review Committee affecting such tribes or organizations; consulting with the Secretary of the Interior in the development of regulations to carry out NAGPRA; and making recommendations regarding future care of repatriated cultural items. The Review Committee's work is completed

during meetings that are open to the public.

Transcripts of Review Committee meetings are available approximately 8 weeks after each meeting at the National NAGPRA program office, 1201 Eye Street NW., Washington, DC. To request electronic copies of meeting transcripts, send an e-mail message to [nagpra\\_info@nps.gov](mailto:nagpra_info@nps.gov). Information about NAGPRA, the Review Committee, and Review Committee meetings is available at the National NAGPRA Web site, <http://www.cr.nps.gov/nagpra>; for the Review Committee's meeting protocol, select "Review Committee," then select "Procedures."

#### Meeting Time and Remote Locations

The teleconference meeting will begin at 2 p.m., and end at approximately 4 p.m., e.s.t. Remote locations for public participation in the teleconference have been established at the following National Park Service offices. Participants should call ahead to ensure access, bring proper identification, and allow extra time to pass through security at each location.

**Washington, DC:** Headquarters Office, 1201 Eye Street NW., 7th floor, room 90. From 2 p.m. to 4 p.m., e.s.t. Contact Robin Coates, (202) 354-2201.

**Boston, MA:** Northeast Regional Office, 15 State Street, 4th floor conference room. Enter through the Visitors Center for Boston National Historical Park. From 2 p.m. to 4 p.m., e.s.t. Contact Chuck Smythe, (617) 223-5014.

**Atlanta, GA:** Southeast Regional Office, 100 Alabama Street, SW., 1924 Building. From 2 p.m. to 4 p.m., e.s.t. Contact J. Anthony Paredes, (404) 562-3117, extension 638.

**Omaha, NE:** Midwest Regional Office, 601 Riverfront Drive, 2nd floor west conference room. From 1 p.m. to 3 p.m., c.s.t. Contact Michelle Watson, (402) 661-1952.

**St. Paul, MN:** Mississippi National River and Recreation Area, 111 East Kellogg Boulevard, room 212. From 1 p.m. to 3 p.m., c.s.t. Contact Michael J. Evans, (651) 221-1028.

**Denver, CO:** Intermountain Regional Office, 12795 West Alameda Parkway. From noon to 2 p.m., m.s.t. Contact Cyd Martin (303) 969-2868.

**Santa Fe, NM:** Intermountain Regional Office—Santa Fe, 2968 Rodeo Park Drive West, 2nd floor, room 2080. From noon to 2 p.m., m.s.t. Contact Ed Lee Natay, (505) 988-6896.

**Oakland, CA:** Pacific West Regional Office, 111 Jackson Street, 6th floor conference room. From 11 a.m. to 1 p.m., p.s.t. Contact Roger Kelly, (510) 817-1400.

*Seattle, WA:* Pacific West Regional Office, 909 First Avenue, room 560. From 11 a.m. to 1 p.m., p.s.t. Contact Fred York, (206) 220-4148.

*Anchorage, AK:* Alaska Regional Office, 240 West 5th Avenue, room 409. From 10 a.m. to noon, a.s.t. Contact Janet Cohen, (907) 644-3462.

*Honolulu, HI:* Island Support Office, 300 Ala Moana Boulevard. From 9 a.m. to 11 a.m., h.s.t. Contact Melia Lane-Kamehale, (808) 2693, extension 729.

#### Agenda for the Teleconference Meeting

The agenda for the November 2, 2004, meeting includes a discussion of proposed regulations regarding future applicability of the statute [43 CFR 10.13], agenda items for a Review Committee meeting tentatively scheduled for March 14-15, 2005, in Hawaii, and to receive presentations and statements by Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and the public. Persons may submit written statements for the Review Committee's consideration to the Designated Federal Officer, facsimile (202) 371-5197, e-mail [tim\\_mckeown@nps.gov](mailto:tim_mckeown@nps.gov).

Dated: October 8, 2004.

#### C. Timothy McKeown,

*Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee.*

[FR Doc. 04-23177 Filed 10-14-04; 8:45 am]

BILLING CODE 4312-50-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

#### Renewal of the Sacramento River Settlement Contracts, Shasta, Tehama, Butte, Glenn, Colusa, Sutter, Yolo, and Sacramento Counties, CA

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice; correction of hearing location.

**SUMMARY:** The Bureau of Reclamation published in the **Federal Register** a notice of availability (NOA) and notice of public hearing for the draft environmental impact statement for the renewal of long-term contracts to deliver water from the Central Valley Project (CVP) to the Sacramento River Settlement Contractors. The NOA contained an incorrect location for the public hearing.

**FOR FURTHER INFORMATION CONTACT:** Mr. Buford Holt, Environmental Specialist, Bureau of Reclamation, Northern California Area Office, at (530) 275-1554, TDD (530) 275-8991.

Correction: In the **Federal Register** of October 1, 2004, (FR 69 58947), on page 58948, in the first column, correct the **ADDRESSES** column: The location for the October 27 Public Hearing is the Monday Afternoon Club, 120 North Lassen Street, Willows, California.

Dated: October 7, 2004.

#### Frank Michny,

*Regional Environmental Officer, Mid-Pacific Region.*

[FR Doc. 04-23147 Filed 10-14-04; 8:45 am]

BILLING CODE 4310-MN-P

## DEPARTMENT OF LABOR

### Employment Standards Administration

#### Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that

section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3014, Washington, DC 20210.

#### Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

#### VOLUME I

New Jersey

NJ030004 (Jun. 13, 2003)

New York

NY030002 (Jun. 13, 2003)

NY030003 (Jun. 13, 2003)

NY030004 (Jun. 13, 2003)

NY030005 (Jun. 13, 2003)

NY030008 (Jun. 13, 2003)

NY030009 (Jun. 13, 2003)  
 NY030010 (Jun. 13, 2003)  
 NY030011 (Jun. 13, 2003)  
 NY030012 (Jun. 13, 2003)  
 NY030014 (Jun. 13, 2003)  
 NY030017 (Jun. 13, 2003)  
 NY030020 (Jun. 13, 2003)  
 NY030022 (Jun. 13, 2003)  
 NY030031 (Jun. 13, 2003)  
 NY030032 (Jun. 13, 2003)  
 NY030033 (Jun. 13, 2003)  
 NY030036 (Jun. 13, 2003)  
 NY030037 (Jun. 13, 2003)  
 NY030039 (Jun. 13, 2003)  
 NY030040 (Jun. 13, 2003)  
 NY030041 (Jun. 13, 2003)  
 NY030043 (Jun. 13, 2003)  
 NY030044 (Jun. 13, 2003)  
 NY030047 (Jun. 13, 2003)  
 NY030048 (Jun. 13, 2003)  
 NY030049 (Jun. 13, 2003)  
 NY030050 (Jun. 13, 2003)  
 NY030051 (Jun. 13, 2003)  
 NY030061 (Jun. 13, 2003)  
 NY030066 (Jun. 13, 2003)  
 NY030072 (Jun. 13, 2003)  
 NY030075 (Jun. 13, 2003)  
 NY030077 (Jun. 13, 2003)

**VOLUME II**

Maryland  
 MD030002 (Jun. 13, 2003)  
 MD030048 (Jun. 13, 2003)  
 Pennsylvania  
 PA030010 (Jun. 13, 2003)  
 Virginia  
 VA030003 (Jun. 13, 2003)  
 VA030014 (Jun. 13, 2003)  
 VA030018 (Jun. 13, 2003)  
 VA030023 (Jun. 13, 2003)  
 VA030031 (Jun. 13, 2003)  
 VA030035 (Jun. 13, 2003)  
 VA030049 (Jun. 13, 2003)  
 VA030051 (Jun. 13, 2003)  
 VA030055 (Jun. 13, 2003)  
 VA030064 (Jun. 13, 2003)  
 VA030076 (Jun. 13, 2003)  
 VA030081 (Jun. 13, 2003)  
 VA030085 (Jun. 13, 2003)  
 VA030088 (Jun. 13, 2003)  
 VA030092 (Jun. 13, 2003)  
 VA030099 (Jun. 13, 2003)

**VOLUME III**

Georgia  
 GA030003 (Jun. 13, 2003)  
 GA030073 (Jun. 13, 2003)  
 GA030085 (Jun. 13, 2003)  
 GA030086 (Jun. 13, 2003)  
 GA030087 (Jun. 13, 2003)  
 GA030088 (Jun. 13, 2003)  
 Mississippi  
 MS030001 (Jun. 13, 2003)  
 MS030003 (Jun. 13, 2003)

**VOLUME IV**

Illinois  
 IL030001 (Jun. 13, 2003)  
 IL030002 (Jun. 13, 2003)

IL030007 (Jun. 13, 2003)  
 IL030010 (Jun. 13, 2003)  
 IL030016 (Jun. 13, 2003)  
 IL030017 (Jun. 13, 2003)  
 IL030026 (Jun. 13, 2003)  
 IL030053 (Jun. 13, 2003)  
 IL030055 (Jun. 13, 2003)  
 IL030065 (Jun. 13, 2003)

**VOLUME V**

Arkansas  
 AR030003 (Jun. 13, 2003)  
 Louisiana  
 LA030005 (Jun. 13, 2003)  
 LA030006 (Jun. 13, 2003)  
 LA030014 (Jun. 13, 2003)  
 Missouri  
 MO030013 (Jun. 13, 2003)  
 MO030058 (Jun. 13, 2003)

**VOLUME VI**

Alaska  
 AK030001 (Jun. 13, 2003)  
 Idaho  
 ID030002 (Jun. 13, 2003)  
 ID030003 (Jun. 13, 2003)  
 ID030015 (Jun. 13, 2003)  
 Oregon  
 OR030001 (Jun. 13, 2003)  
 OR030002 (Jun. 13, 2003)  
 OR030004 (Jun. 13, 2003)  
 OR030007 (Jun. 13, 2003)  
 South Dakota  
 SD030002 (Jun. 13, 2003)  
 SD030006 (Jun. 13, 2003)  
 SD030007 (Jun. 13, 2003)  
 SD030008 (Jun. 13, 2003)  
 SD030010 (Jun. 13, 2003)  
 Utah  
 UT030001 (Jun. 13, 2003)  
 UT030004 (Jun. 13, 2003)  
 UT030007 (Jun. 13, 2003)  
 UT030008 (Jun. 13, 2003)  
 Washington  
 WA030001 (Jun. 13, 2003)  
 WA030002 (Jun. 13, 2003)  
 WA030003 (Jun. 13, 2003)  
 WA030005 (Jun. 13, 2003)  
 WA030007 (Jun. 13, 2003)  
 WA030011 (Jun. 13, 2003)  
 WA030013 (Jun. 13, 2003)  
 Wyoming  
 WY030001 (Jun. 13, 2003)  
 WY030002 (Jun. 13, 2003)  
 WY030005 (Jun. 13, 2003)

**VOLUME VII**

Arizona  
 AZ030001 (Jun. 13, 2003)  
 AZ030002 (Jun. 13, 2003)  
 AZ030016 (Jun. 13, 2003)  
 AZ030017 (Jun. 13, 2003)  
 California  
 CA030033 (Jun. 13, 2003)  
 Hawaii  
 HI030001 (Jun. 13, 2003)  
 Nevada  
 NV030002 (Jun. 13, 2003)  
 NV030004 (Jun. 13, 2003)

NV030005 (Jun. 13, 2003)  
 NV030009 (Jun. 13, 2003)

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General wage determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at <http://www.access.gpo.gov/davisbacon>. They are also available electronically by subscription to the Davis-Bacon Online Service (<http://davisbacon.fedworld.gov>) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1-800-363-2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC This 7th Day of October 2004.

**Terry Sullivan,**

*Acting Chief, Branch of Construction Wage Determinations.*

[FR Doc. 04-22974 Filed 10-14-04; 8:45 am]

**BILLING CODE 4510-27-M**

**DEPARTMENT OF LABOR****Office of the Assistant Secretary for Veterans' Employment and Training****President's National Hire Veterans Committee; Notice of Open Meeting**

The President's National Hire Veterans Committee was established under 38 U.S.C. 4100 note Public Law 107-288, Jobs For Veterans Act, to furnish information to employers with respect to the productivity advantages afforded by hiring qualified veterans and disabled veterans, and to encourage employer participation in the Career One Stop service system and other means.

The President's National Hire Veterans Committee will meet on Thursday, October 21, 2004, beginning at 8:30 a.m. in the Radisson Hotel and Conference Center, 12600 Roosevelt Blvd., St. Petersburg, Florida 33716.

The committee will discuss raising employer awareness of the advantages of hiring veterans.

Signed at Washington, DC, this 5th day of October, 2004.

**Frederico Juarbe Jr.,**

*Assistant Secretary of Labor for Veterans' Employment and Training.*

[FR Doc. 04-23133 Filed 10-14-04; 8:45 am]

**BILLING CODE 4510-79-P**

**NATIONAL SCIENCE FOUNDATION****Notice of Meeting; Advisory Committee for Polar Programs**

In accordance with Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Polar Programs (1130).

*Date/Time:* November 15, 2004, 8 a.m. to 5 p.m.; November 16, 2004, 8 a.m. to 3 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Stafford II, Room 595.

*Type of Meeting:* Open.

*Contact Person:* Altie Metcalf, Office of Polar Programs (OPP), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292-8030.

*Minutes:* May be obtained from the contact person list above.

*Purpose of Meeting:* To advise NSF on the impact of its policies, programs, and activities of the polar research community; to provide advice to the Director of OPP on issues related to long range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

*Agenda:* Staff presentations on program updates; review of the Committee of Visitors' report on the Polar Research Support Section; and discussions on International Polar Year.

Dated: October 12, 2004.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 04-23169 Filed 10-14-04; 8:45 am]

**BILLING CODE 7555-01-M**

**NATIONAL SCIENCE FOUNDATION****Advisory Committee for Social, Behavioral and Economic Sciences; Notice of Meeting**

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

*Name:* Advisory Committee for Social, Behavioral, and Economic Sciences (ACSB) (#1171).

*Date and Time:* November 4, 2004, 8:30 a.m.-5 p.m.; November 5, 2004, 8:30 a.m.-12:30 p.m.

*Place:* The meeting will take place in Arlington, Virginia, exact location TBD; once known, the exact location of the meeting will be posted on SBE's Web site and you may also contact Patricia Vinson, (703) 292-8700 or via e-mail at [pvinson@nsf.gov](mailto:pvinson@nsf.gov).

*Type of meeting:* Open.

*Contact Person:* Mr. Frederic J. Wending, Executive Officer, Directorate for Social, Behavioral, and Economic Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 905, Arlington, VA 22230, (703) 292-8741.

*Summary Minutes:* May be obtained from contact person listed above.

*Purpose of Meeting:* To provide advice and recommendations to the National Science Foundation on major goals and policies pertaining to Social, Behavioral and Economic Sciences Directorate programs and activities.

*Agenda:* Discussion on issues, role and future direction of the Directorate for Social, Behavioral, and Economic Sciences.

Dated: October 12, 2004.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 04-23168 Filed 10-14-04; 8:45 am]

**BILLING CODE 7555-01-M**

**NUCLEAR REGULATORY COMMISSION****Notice of Intent To Prepare an Environmental Impact Statement for the Proposed USEC American Centrifuge Plant**

**AGENCY:** United States Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of Intent (NOI).

**SUMMARY:** USEC Inc., (USEC) submitted a license application to the NRC on August 23, 2004, proposing the construction, operation and future decommissioning of the American Centrifuge Plant (ACP) gas centrifuge uranium enrichment facility in Piketon, OH. The NRC announces its intent to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) and NRC NEPA implementing regulations contained in 10 CFR part 51. The EIS will examine the potential environmental impacts of the proposed USEC ACP.

**DATES:** The public scoping process required by NEPA begins with publication of this NOI and continues until December 6, 2004. Written comments submitted by mail should be postmarked by that date to ensure consideration. Comments mailed after that date will be considered to the extent possible.

NRC will conduct a public scoping meeting to assist in defining the appropriate scope of the EIS, including the significant environmental issues to be addressed. The meeting date, times and location are listed below:

*Meeting Date:* November 15, 2004.

*Meeting Location:* Vern Riffe Career Technology Center, 175 Beaver Creek Road, Piketon, Ohio 45661.

*Scoping Meeting:* 7 p.m. to 9:45 p.m.

Members of the NRC staff will be available for informal discussions with members of the public from 6 p.m. to 7 p.m. The formal meeting and associated NRC presentation begins at 7 p.m. For planning purposes, those who wish to present oral comments at the meeting are encouraged to pre-register by contacting Matthew Blevins of the NRC by telephone at 1-800-368-5642, Extension 7684, or by e-mail at [mxbb@nrc.gov](mailto:mxbb@nrc.gov) no later than November 9, 2004. Interested persons may also register to speak at the meeting.

**ADDRESSES:** Members of the public and interested parties are invited and encouraged to submit comments to the Chief, Rules Review and Directives Branch, Mail Stop T-6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Due to the current mail situation in the Washington, DC area, the NRC encourages comments to be submitted electronically to [nrcprep@nrc.gov](mailto:nrcprep@nrc.gov). Please refer to Docket No. 70-7004 when submitting comments.

**FOR FURTHER INFORMATION CONTACT:** For general or technical information associated with the license review of the USEC application, please contact: Yawar Faraz at (301) 415-8113. For

general information on the NRC NEPA process, or the environmental review process related to the USEC application, please contact: Matthew Blevins at (301) 415-7684.

Information and documents associated with the USEC project, including the USEC license application (submitted on August 23, 2004), are available for public review through the NRC Electronic Reading Room: <http://www.nrc.gov/reading-rm/adams.html>, using accession number ML042800551. Documents may also be obtained from the NRC Public Document Room at U.S. Nuclear Regulatory Commission Headquarters, 11555 Rockville Pike (first floor), Rockville, Maryland, 20852-2738.

#### SUPPLEMENTARY INFORMATION:

##### 1.0 Background

USEC submitted a license application which included an Environmental Report for a gas centrifuge uranium enrichment facility, known as the ACP, to the NRC on August 23, 2004. The NRC environmental review will evaluate the potential environmental impacts associated with the proposed ACP in parallel with the NRC safety and security reviews of the license application. The environmental review will be documented in draft and final Environmental Impact Statements in accordance with NEPA and NRC NEPA implementing regulations contained in 10 CFR part 51.

##### 2.0 USEC Enrichment Facility

If licensed, the proposed ACP would enrich uranium for use in manufacturing commercial nuclear fuel for use in power reactors. Feed and product material would be in the form of uranium hexafluoride (UF<sub>6</sub>). USEC seeks approval from the NRC to enrich uranium in the uranium-235 isotope up to 10 percent. The enriched UF<sub>6</sub> would be transported to a fuel fabrication facility. The depleted UF<sub>6</sub> would be stored on site until a disposition strategy (either re-use or disposal) is carried out.

Initially, the licensed capacity of the plant would be up to 3.5 million separative work units (SWU) per year [SWU relates to a measure of the work used to enrich uranium]. USEC has requested that the NRC environmental review examine the impacts of an enrichment plant with a 7 million SWU per year capacity to bound potential future expansions. The safety and security reviews of any future expansion beyond 3.5 million SWU per year would still have to be conducted by the NRC under a separate license amendment request from USEC.

##### 3.0 Alternatives To Be Evaluated

*No action*—The no-action alternative would be to not build the proposed ACP. Under this alternative the NRC would not approve the license application. This alternative serves as a baseline for comparison.

*Proposed action*—The proposed action is the construction and operation of a gas centrifuge uranium enrichment facility located in Piketon, OH. Implementation of the proposed action would require the issuance of an NRC license under the provisions of 10 CFR parts 30, 40 and 70.

Other alternatives not listed here may be identified through the scoping process.

##### 4.0 Environmental Impact Areas To Be Analyzed

The following resource areas have been tentatively identified for analysis in the EIS:

- Public and Occupational Health:* Potential public and occupational consequences from construction, routine operation, transportation, and credible accident scenarios (including natural events);
- Waste Management:* Types of wastes expected to be generated, handled, stored and subject to re-use or disposal;
- Land Use:* Plans, policies and controls;
- Transportation:* Transportation modes, routes, quantities, and risk estimates;
- Geology and Soils:* Physical geography, topography, geology and soil characteristics;
- Water Resources:* Surface and groundwater hydrology, water use and quality, and the potential for degradation;
- Ecology:* Wetlands, aquatic, terrestrial, economically and recreationally important species, and threatened and endangered species;
- Air Quality:* Meteorological conditions, ambient background, pollutant sources, and the potential for degradation;
- Noise:* Ambient, sources, and sensitive receptors;
- Historical and Cultural Resources:* Historical, archaeological, and traditional cultural resources;
- Visual and Scenic Resources:* Landscape characteristics, manmade features and viewshed;
- Socioeconomics:* Demography, economic base, labor pool, housing, transportation, utilities, public services/facilities, education, recreation, and cultural resources;
- Environmental Justice:* Potential disproportionately high and adverse

impacts to minority and low-income populations; and

- Cumulative Effects:* Impacts from past, present and reasonably foreseeable actions at and near the site.

The examples under each resource area are not intended to be all inclusive, nor is this list an indication that environmental impacts will occur. The list is presented to facilitate comments on the scope of the EIS. Additions to, or deletions from, this list may occur as a result of the public scoping process.

##### 5.0 Scoping Meetings

This NOI is to encourage public involvement in the EIS process and to solicit public comments on the proposed scope and content of the EIS. NRC will hold a public scoping meeting in Piketon, OH on November 15, 2004 to solicit both oral and written comments from interested parties.

Scoping is an early and open process designed to determine the range of actions, alternatives, and potential impacts to be considered in the EIS, and to identify the significant issues related to the proposed action. Scoping is intended to solicit input from the public and other agencies so that the analysis can be more clearly focused on issues of genuine concern. The principal goals of the scoping process are to:

- Identify public concerns;
- Ensure that concerns are identified early and are properly studied;
- Identify alternatives that will be examined;
- Identify significant issues that need to be analyzed; and
- Eliminate unimportant issues.

The scoping meetings will begin with NRC staff providing a description of NRC's role and mission followed by a brief overview of NRC's environmental review process and goals of the scoping meeting. The bulk of the meeting will be allotted for attendees to make oral comments.

##### 6.0 Scoping Comments

Written comments should be mailed to the address listed above in the ADDRESSES section.

The NRC staff will prepare a scoping summary report in which it will summarize public comments. The NRC will make the scoping summary report and project-related materials available for public review through its Electronic Reading Room: <http://www.nrc.gov/reading-rm/adams.html>. The scoping meeting summary and project-related materials will also be available on the NRC's USEC Web page: <http://www.nrc.gov/materials/fuel-cycle-fac/usecfacility.html> (case sensitive).

## 7.0 The NEPA Process

The EIS for the proposed ACP will be prepared according to NEPA and NRC NEPA implementing regulations contained in 10 CFR part 51.

After the scoping process is complete, the NRC will prepare a draft EIS. The draft EIS is scheduled to be published by July 2005. A 45-day comment period on the draft EIS is planned, and a public meeting to receive comments will be held approximately three weeks after publication of the draft EIS. Availability of the draft EIS, the dates of the public comment period, and information about the public meeting will be announced in the **Federal Register**, on NRC's USEC Web page, and in the local news media. The final EIS is expected to be published in March 2006 and will incorporate, as appropriate, public comments received on the draft EIS.

Signed in Rockville, MD, this 7th day of October 2004.

For the Nuclear Regulatory Commission.

**B. Jennifer Davis,**

*Chief, Environmental and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 04-23134 Filed 10-14-04; 8:45 am]

BILLING CODE 7590-01-P

## PENSION BENEFIT GUARANTY CORPORATION

### Proposed Submission of Information Collection for OMB Review; Comment Request; Liability for Termination of Single-Employer Plans

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of intention to request extension of OMB approval.

**SUMMARY:** The Pension Benefit Guaranty Corporation ("PBGC") intends to request that the Office of Management and Budget ("OMB") extend approval, under the Paperwork Reduction Act, of a collection of information contained in its regulation on Liability for Termination of Single-Employer Plans, 29 CFR part 4062 (OMB control number 1212-0017; expires January 31, 2005). This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

**DATES:** Comments should be submitted by December 14, 2004.

**ADDRESSES:** Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC

20005-4026, or delivered to Suite 340 at that address during normal business hours. Comments also may be submitted electronically through the PBGC's Web site at <http://www.pbgc.gov/paperwork>, or by fax to (202) 326-4112. The PBGC will make all comments available on its Web site, <http://www.pbgc.gov>.

Copies of the collection of information may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at Suite 240 at the above address or by visiting that office or calling (202) 326-4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to (202) 326-4040.) The regulation on Liability for Termination of Single-Employer Plans can be accessed on the PBGC's Web site at <http://www.pbgc.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Harold J. Ashner, Assistant General Counsel, or Thomas H. Gabriel, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, (202) 326-4024. (For TTY and TDD, call (800) 877-8339 and request connection to (202) 326-4024).

**SUPPLEMENTARY INFORMATION:** Section 4062 of the Employee Retirement Income Security Act of 1974 provides that the contributing sponsor of a single-employer pension plan and members of the sponsor's controlled group ("the employer") incur liability ("employer liability") if the plan terminates with assets insufficient to pay benefit liabilities under the plan. The PBGC's statutory lien for employer liability and the payment terms for employer liability are affected by whether and to what extent employer liability exceeds 30 percent of the employer's net worth.

Section 4062.6 of the PBGC's employer liability regulation (29 CFR 4062.6) requires a contributing sponsor or member of the contributing sponsor's controlled group who believes employer liability upon plan termination exceeds 30 percent of the employer's net worth to so notify the PBGC and to submit net worth information. This information is necessary to enable the PBGC to determine whether and to what extent employer liability exceeds 30 percent of the employer's net worth.

The collection of information under the regulation has been approved by OMB under control number 1212-0017 through January 31, 2005. The PBGC intends to request that OMB extend its approval for another three years. An agency may not conduct or sponsor, and a person is not required to respond to,

a collection of information unless it displays a currently valid OMB control number.

The PBGC estimates that an average of 5 contributing sponsors or controlled group members per year will respond to this collection of information. The PBGC further estimates that the average annual burden of this collection of information will be 12 hours and \$3,300 per respondent, with an average total annual burden of 60 hours and \$16,500.

The PBGC is soliciting public comments to—

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Issued in Washington, DC, this 12th day of October, 2004.

**Stuart A. Sirkin,**

*Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.*

[FR Doc. 04-23182 Filed 10-14-04; 8:45 am]

BILLING CODE 7708-01-P

## PENSION BENEFIT GUARANTY CORPORATION

### Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of interest rates and assumptions.

**SUMMARY:** This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These



rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (<http://www.pbgc.gov>).

**DATES:** The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in October 2004. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in November 2004. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the fourth quarter (October through December) of 2004.

**FOR FURTHER INFORMATION CONTACT:**

Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, (202) 326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to (202) 326-4024.)

**SUPPLEMENTARY INFORMATION:**

**Variable-Rate Premiums**

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. Pursuant to the Pension Funding Equity Act of 2004, for premium payment years beginning in 2004 or 2005, the required interest rate is the "applicable percentage" (currently 85 percent) of the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the beginning of the plan year for which premiums are being paid. Thus, the required interest rate to be used in determining variable-rate premiums for premium payment years beginning in October 2004 is 4.79 percent (*i.e.*, 85 percent of the 5.63 percent composite corporate bond rate for September 2004 as determined by the Treasury).

The following table lists the required interest rates to be used in determining variable-rate premiums for premium

payment years beginning between November 2003 and October 2004. Note that the required interest rates for premium payment years beginning in November through December 2003 were determined under the Job Creation and Worker Assistance Act of 2002, and that the required interest rates for premium payment years beginning in January through October 2004 were determined under the Pension Funding Equity Act of 2004.

For premium payment years beginning in:	The required interest rate is:
November 2003* .....	5.16
December 2003* .....	5.12
January 2004** .....	4.94
February 2004** .....	4.83
March 2004** .....	4.79
April 2004** .....	4.62
May 2004** .....	4.98
June 2004** .....	5.26
July 2004** .....	5.25
August 2004** .....	5.10
September 2004** .....	4.95
October 2004** .....	4.79

\*The required interest rates for premium payment years beginning in November through December 2003 were determined under the Job Creation and Worker Assistance Act of 2002.

\*\*The required interest rates for premium payment years beginning in January through October 2004 were determined under the Pension Funding Equity Act of 2004.

**Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability**

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-Employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the fourth quarter (October through December) of 2004, as announced by the IRS, is 5 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From—	Through—	Interest rate (percent)
4/1/98 .....	12/31/98	8
1/1/99 .....	3/31/99	7
4/1/99 .....	3/31/00	8
4/1/00 .....	3/31/01	9
4/1/01 .....	6/30/01	8
7/1/01 .....	12/31/01	7
1/1/02 .....	12/31/02	6
1/1/03 .....	9/30/03	5
10/1/03 .....	3/31/04	4
4/1/04 .....	6/30/04	5
7/1/04 .....	9/30/04	4
10/1/04 .....	12/31/04	5

**Underpayments and Overpayments of Multiemployer Withdrawal Liability**

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates"). The rate for the fourth quarter (October through December) of 2004 (*i.e.*, the rate reported for September 15, 2004) is 4.50 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From—	Through—	Interest rate (percent)
7/1/97 .....	12/31/98	8.50
1/1/99 .....	9/30/99	7.75
10/1/99 .....	12/31/99	8.25
1/1/00 .....	3/31/00	8.50
4/1/00 .....	6/30/00	8.75
7/1/00 .....	3/31/01	9.50
4/1/01 .....	6/30/01	8.50
7/1/01 .....	9/30/01	7.00
10/1/01 .....	12/31/01	6.50
1/1/02 .....	12/31/02	4.75
1/1/03 .....	9/30/03	4.25
10/1/03 .....	9/30/04	4.00
10/1/04 .....	12/31/04	4.50

**Multiemployer Plan Valuations Following Mass Withdrawal**

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's



regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in November 2004 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 12th day of October 2004.

**Joseph H. Grant,**

*Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.*

[FR Doc. 04-23181 Filed 10-14-04; 8:45 am]

BILLING CODE 7708-01-P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of October 18, 2004:

A Closed Meeting will be held on Tuesday, October 19, 2004 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (8), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), (8), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Glassman, as duty officer, voted to consider the items

listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Tuesday, October 19, 2004 will be:

Formal orders of investigations; Institution and settlement of injunctive actions; Institution and settlement of administrative proceedings of an enforcement nature; Regulatory matters regarding financial institutions; and Amici consideration.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: October 12, 2004.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 04-23199 Filed 10-12-04; 4:09 pm]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50500; File No. SR-Amex-2004-80]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Transaction Fees in Connection With the SPDR O-Strip

October 7, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 1, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items

have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise transaction fees for specialists and registered options traders ("ROTs") in connection with transactions in the SPDR O-Strip ("O-Strip").<sup>3</sup> The text of the revised fee schedule is available at the Office of the Secretary, Amex, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

Amex recently launched the trading of the O-Strip on the Exchange. Transaction charges for specialists, ROTs, broker-dealers, and customers have accordingly been billed at current rates existing for ETFs pursuant to the existing fee schedule in effect. The Exchange now proposes, in connection with the O-Strip, to charge specialists and ROTs as set forth below in the transaction fee schedule:

#### TRANSACTION CHARGES FOR THE O-STRIP

	Specialists	Registered traders
Per Share Side .....	\$0.0050 (\$0.50 per 100 shares) .....	\$0.0050 (\$0.50 per 100 shares)
Subject to the following per trade maximums: ..	\$300 (60,000 shares) .....	\$300 (60,000 shares)

Transaction charges for specialists are capped at \$400,000 per month per specialist unit

Transaction fees for off-floor broker-dealers and customers will remain as set

forth in the existing ETF fee schedule. These charges are \$0.006 per share

(\$0.60 per 100 shares), capped at \$100 per trade (16,667 shares). Accordingly,

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The O-Strip is an exchange-traded fund ("ETF") share that seeks to provide investment results

corresponding to the newly-launched Standard & Poor's ("S&P") 500 O-Strip Index. The S&P 500 O-Strip Index consists of all the individual S&P 500 component securities that are primarily traded in

the over-the-counter market. The Index currently consists of approximately 75 securities, representing approximately 15% of the market capitalization of the S&P 500 Index.

this proposal seeks to change the transaction fees for only Exchange specialists and ROTs in connection with trading in the O-Strip.

The Exchange submits that the proposal will be effective October 1, 2004. The Exchange expects the proposed transaction fees in connection with the O-Strip will recoup the costs and provide additional revenue associated with the trading of the O-Strip. In addition, Amex believes that this fee will help to allocate to those specialists and ROTs transacting in the O-Strip, a fair share of the related costs of such ETFs. Accordingly, the Exchange believes that the proposed fee is reasonable.

## 2. Statutory Basis

Amex believes that the proposed fee change is consistent with Section 6(b)(4) of the Act<sup>4</sup> regarding the equitable allocation of reasonable dues, fees, and other charges among exchange members and other persons using exchange facilities.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes the proposed rule change will impose no burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective immediately pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>5</sup> and Rule 19b-4(f)(2) thereunder.<sup>6</sup> At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary of appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2004-80 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-80. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2004-80 and should be submitted on or before November 5, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-23124 Filed 10-14-04; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50499; File No. SR-Amex-2004-75]

### Self-Regulatory Organizations; Notice of Withdrawal of a Proposed Rule Change by the American Stock Exchange LLC Relating to Revisions to Amex Rule 154

October 6, 2004.

On August 30, 2004, the American Stock Exchange LLC ("Amex"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> to amend Amex Rule 154 to prohibit specialists from charging commissions and fees in certain instances. The proposed rule change was published for comment in the **Federal Register** on September 9, 2004.<sup>3</sup> The Commission received six comments on the proposal.<sup>4</sup>

On October 1, 2004, the Amex withdrew the proposed rule change.<sup>5</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-23125 Filed 10-14-04; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 50307 (September 2, 2004), 69 FR 54709.

<sup>4</sup> See letter to Elizabeth King, Associate Director, Division of Market Regulation ("Division"), Commission, from James D. Van De Graaff, Partner, Katten Muchin Zavis Rosenman, dated September 7, 2004; letters to Jonathan G. Katz, Secretary, Commission, from Charles B. Cox III, dated September 27, 2004, from Todd Silverberg, General Counsel, Susquehanna Investment Group, dated September 29, 2004, from Simon Lubershan, dated September 29, 2004, from Matthew Hinerfeld, Managing Director and Deputy General Counsel, Citadel Derivatives Group LLC, dated September 30, 2004, and from Ryan Primmer, Managing Director, UBS Securities LLC, dated September 30, 2004.

<sup>5</sup> See letter from Bill Floyd-Jones, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated September 30, 2004.

<sup>6</sup> 17 CFR 200.30-3(a)(12).

<sup>4</sup> 15 U.S.C. 78f(b)(4).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50498; File No. SR-Amex-2004-66]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Allocation Procedures for Relisted Options

October 6, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 10, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On September 24, 2004, Amex filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 27. The text of the proposed rule change is set forth below. Proposed new language is *italicized*. Deleted language is in brackets.

\* \* \* \* \*

#### Allocations Committee

Rule 27 (a) through (i) No change.  
Commentary .01 through .03 No change.

.04 Relisted Securities. A specialist shall be automatically allocated a security in which the specialist previously was registered only if all of the following conditions are met: (1) the company relists within one year of delisting, (2) the company is substantially the same entity as prior to delisting, (3) the company has no objection, and (4) the specialist is not subject to an allocation prohibition. A relisted option *shall* [will] be *automatically allocated to the*

*previously registered specialist unless (1) that specialist is subject to a prohibition on the allocation of options at the time that the option is relisted, (2) the Exchange relists the option more than one year after it was delisted, or (3) the specialist declines the allocation in writing [pursuant to the procedures described in paragraph (b) of this Rule]. If any of these conditions exist, the Allocations Committee will allocate the relisted option pursuant to the Exchange's regular options allocations procedures.*  
(.05) No change.

\* \* \* \* \*

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

A relisted security is a security that previously traded on the Exchange, was delisted, and is subsequently readmitted to dealings. In the case of options, the Exchange's rule on relisted securities currently provides that a relisted option will go to open allocation with no explicit preference given to the original specialist. Amex asserts that specialists, as a result, are reluctant to delist an inactive option because they are concerned that if they agree to delist the option, and it subsequently becomes active, they will have lost the opportunity to specialize in it.

To encourage specialists to delist inactive options, the Exchange is proposing to amend the Exchange's allocations rules on relisted securities to provide that a relisted option will be automatically allocated to its original specialist unless: (1) The specialist is subject to a prohibition on options allocations at the time that the option is relisted; (2) the Exchange relists the option more than one year after it was delisted; or (3) the specialist declines in writing to accept the allocation. If any of these conditions exists, the

Exchange's Allocations Committee will allocate the relisted option pursuant to its regular allocation procedures. The Exchange believes that this change in allocations policy will eliminate a disincentive to the delisting of inactive options. The Exchange further believes that this could benefit the options market and, consequently, investors in options by reducing quote traffic in options.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b),<sup>5</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from William Floyd-Jones, Associate General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 23, 2004 ("Amendment No. 1"). Amendment No. 1 replaced the original proposed rule change in its entirety. Amendment No. 1 amended the proposal to limit the reallocation of a relisted option to the original specialist to a one year period.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2004-66 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-66. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2004-66 and should be submitted on or before November 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-23126 Filed 10-14-04; 8:45 am]

BILLING CODE 8010-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50502; File No. SR-NASD-2004-49]

##### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish Access Fees for Nasdaq's Brut Facility**

October 7, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 4, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii)<sup>3</sup> of the Act and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

##### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Nasdaq proposes to establish access fees for its Brut trading facility. The text of the proposed rule change is available at the Office of the Secretary, Nasdaq, and at the Commission.

##### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the

proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

###### 1. Purpose

Nasdaq represents that, on September 7, 2004, Nasdaq completed its purchase of the Brut ECN ("Brut"). Once purchased by Nasdaq, Brut became a "facility" of a national securities association,<sup>5</sup> thereby making the pricing for Brut's services subject to Section 15A(b)(5) of the Act, which requires that the fees of a national securities association be equitably allocated among members and issuers and other persons using the facility.<sup>6</sup> In this filing, Nasdaq proposes to establish such a fee structure for members who access orders residing in Brut's system. Under the proposal, Nasdaq will create a tiered fee structure in which the per share fee charged to a member to access liquidity in Brut will vary based on the amount of liquidity added to Brut by that member. Members that provide an average daily volume of 50,000 shares or less over a calendar month will be charged \$0.003 per share when accessing liquidity in the Brut system for that same month. Members that provide an average daily volume of 50,001 shares or more over a calendar month will be charged \$0.0027 per share when accessing liquidity in the Brut system for that same month.

Nasdaq believes that the above approach provides a uniform and objective method to impose fees for accessing liquidity in the Brut system that also encourages the provision of liquidity beneficial to all members.

###### 2. Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>7</sup> in general, and with Section 15A(b)(5) of

<sup>5</sup> See Section 3(a)(2) of the Act, 15 U.S.C. 78c(a)(2).

<sup>6</sup> 15 U.S.C. 78o-3(b)(5). Nasdaq currently operates Brut pursuant to a Temporary Conditional Exemption ("Exemption") issued by the Commission pursuant to Section 36(a) of the Act. See Securities Exchange Act Release No. 50311 (September 3, 2004), 69 FR 54818 (September 10, 2004). The Exemption requires Nasdaq to file proposed rule changes under Section 19(b) of the Act if it seeks to modify Brut's fee schedule.

<sup>7</sup> 15 U.S.C. 78o-3.

<sup>6</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

the Act,<sup>8</sup> in particular, in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among members.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The forgoing rule change is subject to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and subparagraph (f)(2) of Rule 19b-4<sup>10</sup> thereunder because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>11</sup>

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2004-149 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-149. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2004-149 and should be submitted on or before November 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4-2655 Filed 10-14-04; 8:45 am]

BILLING CODE 8010-01-P

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-50497; File No. SR-NFA-2004-02]

#### **Self-Regulatory Organizations; National Futures Association; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Adopting Interpretive Notice to Bylaw 1101 and Compliance Rules 2-9 and 2-29**

October 6, 2004.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-7 thereunder,<sup>2</sup> notice is hereby given that on September 10, 2004, the National

Futures Association ("NFA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NFA. On September 9, 2004, the NFA filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC") for approval. Pursuant to Section 19(b)(7)(B) of the Act,<sup>3</sup> the proposed rule change may take effect upon approval by the CFTC. On September 28, 2004, NFA filed with the Commission Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

NFA proposes to adopt NFA Bylaw 1508 regarding securities futures agreements. The text of the proposed rule change appears below. New language is in *italics*.

\* \* \* \* \*

*NFA Bylaw 1101, Compliance Rules 2-9 and 2-29: Guidelines Relating to the Registration of Third-Party Trading System Developers and the Responsibility of NFA Members for Promotional Material That Promotes Third-Party Trading System Developers and Their Trading Systems*

*In recent years, there has been a significant increase in the number of futures trading systems being marketed to the public. These trading systems typically are computerized programs that generate signals as to when to buy and sell commodity futures and options contracts.*

*A number of NFA Member firms offer trade execution services to customers who use these computerized trading systems, many of which are developed by third-party trading system developers ("third-party system developers"), who are neither NFA members nor registered with the CFTC. Typically, in these situations, the customer will execute a Letter of Direction that directs the Member to place trades for the customer in strict accordance with the signals generated by the trading system. In some cases, the Letter of Direction is more limited and includes instructions to follow only certain signals (e.g.,*

<sup>3</sup> 15 U.S.C. 78s(b)(7)(B).

<sup>4</sup> See letter from Kathryn Page Camp, Associate General Counsel, NFA, to John C. Roeser, Senior Special Counsel, Division of Market Regulation, Commission, dated September 28, 2004. Amendment No. 1 makes minor technical changes to the proposed rule text.

<sup>8</sup> 15 U.S.C. 78o-3(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 CFR 240.19b-7.

signals in given contracts or signals that meet particular parameters). In almost all cases in which a Letter of Direction is used, the Member is not permitted to use any judgment when placing orders for the customer.

This notice is designed to provide guidance as to the circumstances which may give rise to liability on the part of the Member, under NFA Bylaw 1101, for providing execution services to users of computerized trading systems developed by non-Member third-party system developers. This notice will also discuss the factors that may cause a Member to be responsible, under NFA Compliance Rule 2-29, for promotional material which promotes these trading systems and the Member's supervisory obligations under NFA Compliance Rule 2-9.

#### Registration Requirements for Third-Party System Developers

Section 1a(6) of the Commodity Exchange Act ("CEA") defines a CTA as any person who for compensation or profit, engages in the business of advising others, directly or through publications, writings, or electronic media, as to the value of or the advisability of trading commodity futures. Generally, Section 4m of the CEA requires individuals who fall within this definition to register with the CFTC. In March 2000, the CFTC adopted CFTC Rule 4.14(a)(9) to create an exemption from the CEA's registration requirements for CTAs that provide standardized advice by means of media such as newsletters, pre-recorded telephone hotlines, Internet Web sites, and non-customized computer software.

To qualify for the exemption, under Rule 4.14(a)(9)(i) a CTA may not direct client accounts. As defined by Commission Rule 4.10(f), "[d]irect, as used in the context of trading commodity interest accounts, refers to agreements whereby a person is authorized to cause transactions to be effected for a client's commodity interest account without the client's specific authorization." In a Commission Staff letter issued in May 2003, Commission Staff indicated that an agreement authorizing a person to direct a client's account—and, thus, requiring the person to be registered as a CTA—may be an informal agreement. The fact pattern addressed by the Commission's Staff letter involved a developer of a computerized trading system who was registered as an associated person ("AP") of an introducing broker ("IB"). The AP's activities on behalf of the IB consisted solely of soliciting clients to use his

trading program. Such clients executed a "letter of direction" providing that the IB should execute trades for the clients' accounts and "follow [the trading program] signals as close as reasonably possible."

In analyzing the above fact pattern, Commission Staff concluded that, since the clients' contact with the AP/trading system developer included not only the trading program, but also the opening of a trading account that would be traded pursuant to a "letter of direction," there was an "informal arrangement", for which the exemption provided under Rule 4.14(a)(9) was not intended. After specifically noting that the "whole of [the AP/trading system developer's] activities as an AP of the IB consisted of the solicitation of clients for the trading program, CFTC staff determined that registration as a CTA was required of either the IB or the AP. (See CFTC staff letter, No. 03-26, May 30, 2003, re Section 4m—Interpretation with regard to Commodity Trading Advisor Registration.)

Rule 4.14(a)(9)(ii) also provides that, to qualify for the exemption, a CTA may not provide "commodity trading advice based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients." So long as the CTA's advice is based on or tailored to such information, the CTA is required to register even if it gives the same advice to groups of similarly situated clients.

In determining whether advice is "based on or tailored to" within the meaning of 4.14(a)(9)(ii), the context of the advice will be taken into account. For example, if the advice is provided in a book or a periodical, that factor may weigh against a finding that the CTA is providing advice "based on or tailored to" the characteristics of particular clients. On the other hand, if the advice is provided to a particular client in a face-to-face communication or over the telephone, that factor may weigh in favor of a finding that the CTA's advice is "based on or tailored to" that particular customer's characteristics, since such a context suggests that the CTA is being responsive to the client's individual needs.<sup>1</sup>

Whether a third-party system developer is required to be registered as a CTA still depends on the particular facts of each case. In some cases, the third-party system developer—or any third-party, for that matter—may be required to register as an IB, if it refers

customers to an NFA Member and receives compensation for the referrals. Members who have questions concerning the application of Rule 4.14 are urged to seek advice from the CFTC.

Regardless of whether a third-party system developer is required to register as a CTA, the question sometimes arises whether the IBs involved must also register as CTAs. If the IB and the third-party system developer are operated as wholly independent entities and the IB has no authority to deviate from the third-party system developer's recommendations, generally the IB need not also register as a CTA. This is clearly the case where a customer independently selects a trading system and the IB does not solicit discretionary trading authority. However, if any of these factors change (e.g., the IB has authority to deviate from the trading system by selecting only some of the trades generated by the system), the IB may be required to register as a CTA, unless the IB is otherwise exempt because its activities related to placing trades based on the recommendations of the trading system are "solely in connection with its business as an IB."

NFA Bylaw 1101 provides, in pertinent part, that no Member may carry an account, accept an order or handle a transaction in commodity futures on behalf of any non-Member that is required to be registered as a CTA or in some other capacity. Therefore, if it appears that a third-party system developer, with whom an NFA Member does business, is required to be registered as a CTA or in some other capacity, the Member should request that the third-party system developer provide a letter from counsel stating the reasons why registration is not required.<sup>2</sup> In the absence of such a letter, the Member should request that the third-party system developer apply for registration and NFA membership. If the third-party system developer fails or refuses to register and become an NFA Member, the Member should terminate its relationship with the third-party system developer to avoid liability under NFA Bylaw 1101.

#### A Member's Responsibility for Misleading Promotional Material Which Promotes a Third-Party System Developer's Trading Program

NFA has encountered, with increasing frequency in recent years, misleading promotional material promoting trading

<sup>1</sup> The Commission gives a number of examples, which illustrate the application of Rule 4.14(a)(9) in specific situations, in the Rule's publication in the *Federal Register*: March 10, 2000 (Volume 65, Number 48, pages 12938-12943.)

<sup>2</sup> Member firms may rely in good faith upon a copy of a letter from counsel. However, in some cases, a Member may have to perform additional due diligence to ascertain whether a third-party system developer is required to be registered.

systems developed by third-party system developers, who are not NFA Members, and for which an NFA Member provides trade execution services. Often this promotional material uses hypothetical or simulated results—which are trading results not achieved by an actual account—that are not clearly identified as hypothetical and show impressive gains, when customers actually using the trading system have suffered substantial losses. In this and other contexts, both NFA and the Commission have brought numerous enforcement actions charging fraud in the use of such promotional material.

Following are several examples of situations where Members may be held accountable under Compliance Rules 2–29 and 2–9 for misleading promotional material that promotes third-party trading system developers and their trading systems.

#### Direct Responsibility

If an NFA Member or its Associates prepare or distribute the promotional material, the Member will be responsible for its misleading content under NFA Compliance Rule 2–29, which prohibits a Member from using misleading or deceptive promotional material.

#### Agency Responsibility

NFA's Business Conduct Committee has always recognized that each Member is responsible for the acts of its agents. This certainly applies to the preparation of advertising material. Thus, an NFA Member may be responsible, under NFA Compliance Rule 2–29, for misleading promotional material prepared and disseminated by a third-party trading system developer, whether or not the third-party trading system developer is an NFA Member or not, if there is an agency relationship between the NFA Member and the third-party trading system developer. (Of course, if the third-party trading system developer is also an NFA Member, it too would be responsible under NFA Compliance Rule 2–29 for the misleading promotional material that it prepared and distributed.)

In determining whether there is an agency relationship between the Member and the third-party system developer, which would trigger liability under NFA Compliance Rule 2–29, the central inquiry focuses on the nature of the business relationship between the parties and whether the parties have expressly or implicitly agreed that one may act for the other. As the CFTC has held, whether an agency relationship exists turns “on an overall assessment of the totality of the circumstances in each case.” The more limited the

contacts are between the third-party system developer and the NFA Member, the more likely it is that an agency relationship will not be found to exist between the parties.

If there is an agency relationship between the Member and the third-party system developer, then the Member has an affirmative duty, under NFA Compliance Rule 2–9, to supervise the activities of the third-party system developer/agent.

#### Supervisory Responsibility Under NFA Compliance Rule 2–9

Even where no agency relationship exists, a Member whose web site links to or otherwise refers customers to a third-party system developer or has a referral agreement with a third-party trading system developer should conduct a due diligence inquiry into the system developer's advertising practices with a view towards identifying and avoiding the misleading advertising practices described earlier, i.e., the use of exaggerated profit claims, and hypothetical or simulated results which are not clearly identified as hypothetical, or which show highly profitable performance when actual customers trading the system have sustained significant losses.<sup>3</sup>

The fact that a Member creates a hyperlink from its web site or otherwise refers customers to a third-party system developer or has a referral agreement with a third-party system developer does not, in and of itself, make the Member firm accountable for the third-party system developer's web site or promotional material. Member firms should bear in mind, though, that their supervisory obligations under Rule 2–9 and Rule 2–29 require them to diligently supervise their employees and agents who are responsible for creating and maintaining hyperlinks to web sites of third-party system developers; or establishing referral agreements with third-party system developers. Members should consider whether appropriate supervisory procedures include periodic inquiries as to whether their employees and agents are conducting due diligence with respect to the third-party system developer's web site or advertising, and taking appropriate steps if deficiencies are found in such web site or advertising. A Member's failure to supervise its employees and agents in this regard will constitute a violation of NFA Compliance Rule 2–9 on the part of the Member. Moreover, in these situations, Member firms should not

seek to circumvent NFA's promotional material requirements by relying upon the unregistered status of the third-party trading system developer.

\* \* \* \* \*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NFA has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

In recent years, NFA has witnessed a growing number of futures trading systems being marketed to the public. Typically, these are computerized trading systems which are developed by third-party trading system developers (“third-party system developers”), who are not required to be registered with the CFTC or members of NFA. The proposed Interpretive Notice to NFA Bylaw 1101 and Compliance Rules 2–9 and 2–29 provides guidance on two issues that NFA members face when they offer trade execution services to customers who use these computerized trading systems.

NFA believes that the Interpretive Notice summarizes the registration requirements for commodity trading advisors (“CTA”). NFA Bylaw 1101 provides, in pertinent part, that no member may carry an account, accept an order or handle a transaction in commodity futures on behalf of any non-member that is required to be registered as a CTA or in some other capacity. This section of the Interpretive Notice is designed to assist members in complying with NFA Bylaw 1101 when they do business with third-party system developers.

According to NFA, the Interpretive Notice also addresses members' potential responsibility under NFA Compliance Rules 2–9 and 2–29 for misleading promotional material that promotes these trading systems. Such promotional material often relies upon extremely favorable hypothetical results which are not clearly identified as hypothetical and which are dramatically

<sup>3</sup> See also NFA's interpretive notice entitled “NFA Compliance Rule 2–9: Supervisory Procedures for E-Mail and the Use of Web Sites” (§9037).



better than the actual performance of customers who have used the system, many of whom have sustained large losses. Pursuant to NFA Compliance Rule 2-29(c), a member firm is prohibited from using these types of hypothetical results unless it meets very stringent requirements, which non-member third-party system developers are not required to meet.

For example, NFA recently reviewed a promotional piece used by a non-member third-party system developer to promote its trading system, which boasted of hypothetical annual rates of return ranging from 86.4% to 151.7%. In this particular case, the NFA member offering trade execution services for this system claimed that no customers had traded this system. Because the third-party system developer is a non-member, NFA was unable to determine whether any customers had actually used the trading system and, if so, whether their actual performance corresponded to the advertised favorable hypothetical returns. According to NFA, the CFTC has also been confronted with and taken action against third-party system developers that use misleading promotional material to promote their trading systems.

The proposed Interpretive Notice reminds members that they will be directly responsible under NFA Compliance Rule 2-29 if the member or its Associates prepares or distributes misleading promotional material regarding a third-party system developer or its trading system. It also reminds members that they may be responsible for misleading promotional material prepared and disseminated by a third-party trading system developer if there is an agency relationship between the NFA member and the third-party trading system developer.

Finally, the Interpretive Notice states that, even where no agency relationship exists, members have a supervisory obligation under NFA Compliance Rules 2-9 and 2-29 to diligently supervise their employees and agents who are responsible for creating and maintaining hyperlinks to web sites of or establishing referral agreements with third-party system developers. A member whose web site links to, or otherwise refers its customers to, a third-party system developer or who has a referral agreement with a third-party trading system developer should conduct a due diligence inquiry into the system developer's advertising practices.

## 2. Statutory Basis

NFA believes that the proposed rule change is consistent with Section 15A(k) of the Act.<sup>5</sup>

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

NFA believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act and the Commodity Exchange Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

NFA states that it worked with industry representatives in developing the proposed rule change. NFA did not, however, publish the proposed rule change to the membership for comment. NFA did not receive comment letters concerning the proposed rule change.

In working with the industry, NFA staff discussed the proposed Interpretive Notice with NFA's Futures Commission Merchant ("FCM"), Introducing Broker ("IB"), and Commodity Pool Operator/Commodity Trading Advisors ("CPO/CTA") Advisory Committees and with the Futures Industry Association (FIA) Law and Compliance Committee, and most of their suggestions were incorporated in the final version adopted by NFA's Board of Directors ("Board"). The IB and CPO/CTA Advisory Committees supported the Interpretive Notice. The FCM Advisory Committee and FIA's Law and Compliance Committee still have reservations about some of the language regarding members' supervisory responsibilities when linking to or entering into referral arrangements with third-party system developers.

NFA's Board adopted the Interpretive Notice by a vote of 21 to 1 with one abstention, concluding that the Interpretive Notice accurately describes members' responsibilities under NFA rules and provides needed guidance to members that deal with third-party system developers.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission notes that NFA's proposal will become effective upon approval by the CFTC. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed

rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.<sup>6</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NFA-2004-02 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NFA-2004-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NFA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NFA-2004-02 and should be submitted on or before November 5, 2004.

<sup>6</sup> 15 U.S.C. 78s(b)(1). For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on September 28, 2004, the date NFA filed Amendment No. 1.

<sup>5</sup> 15 U.S.C. 78o-3(k).



For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4-2654 Filed 10-14-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50505; File No. SR-NYSE-2004-55]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. To List and Trade the iShares® FTSE/Xinhua China 25 Index Fund

October 8, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 27, 2004 the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to list and trade the iShares® FTSE/Xinhua China 25 Index Fund ("Fund"), an exchange traded fund, which is a type of Investment Company Unit ("ICU").

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III, below, and is set forth in Sections A, B, and C below.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange has adopted listing standards applicable to ICUs which are consistent with the listing criteria currently used by the American Stock Exchange LLC and other national securities exchanges, and trading standards pursuant to which the Exchange may either list and trade ICUs, or trade such ICUs on the Exchange on an unlisted trading privileges ("UTP") basis.<sup>3</sup>

The Exchange now proposes to list and trade under Section 703.16 of the NYSE Listed Company Manual and NYSE Rule 1100 shares of the Fund,<sup>4</sup> a series of the iShares Trust ("Trust").<sup>5</sup> Because the Fund invests in foreign securities not listed on a national securities exchange or the Nasdaq Stock Market, the Fund does not meet the "generic" listing requirements of Section 703.16 of the Manual, which permits the listing and trading of ICUs pursuant to Rule 19b-4(e) under the Exchange Act.<sup>6</sup> Therefore, to list the Fund (or trade pursuant to unlisted trading privileges), the Exchange must file, and obtain Commission approval

<sup>3</sup> In 1996, the Commission approved Section 703.16 of the NYSE Listed Company Manual ("Manual"), which sets forth the rules related to the listing of ICUs. See Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996). In 2000, the Commission also approved the Exchange's generic listing standards for listing and trading, or the trading pursuant to UTP, of ICUs under Section 703.16 of the Manual and NYSE Rule 1100. See Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000).

<sup>4</sup> iShares is a registered trademark of Barclays Global Investors, N.A.

<sup>5</sup> The Trust is registered under the Investment Company Act of 1940, as amended ("Investment Company Act"). On January 22, 2003, the Trust filed with the Commission a Registration Statement for the fund on Form N-1A under the Securities Act of 1933, as amended, and under the Investment Company Act relating to the Fund (File Nos. 333-92935 and 811-09729) (as amended, the "Registration Statement"). On January 27, 2004, the Trust filed a Form N-1A to update certain Fund information.

On October 5, 2004, the Commission approved the Second Amended and Restated Application for an Amended Order under Sections 6(c) and 17(b) of the Investment Company Act. See Investment Company Act Release No. 26626 (October 5, 2004) ("Amended Order"); Investment Company Act Release No. 26597 (September 14, 2004), 69 FR 56105 (September 17, 2004) (File No. 812-12936). The Amended Order permits the Trust to offer three new International ETFs, including the Fund, and permits the Fund, along with certain other International ETFs, to invest in certain depository receipts, as described below.

<sup>6</sup> 17 CFR 240.19b-4(e).

of, a proposed rule change pursuant to Rule 19b-4 under the Exchange Act.

As set forth in detail herein, the Fund will hold certain securities and other instruments selected to correspond generally to the performance of the FTSE/Xinhua China 25 Index ("Underlying Index"). The Fund intends to qualify as a "regulated investment company" ("RIC") under the Internal Revenue Code (the "Code"). Barclays Global Fund Advisors ("Advisor" or "BGFA") is the investment advisor to the Fund. The Advisor is registered under the Investment Advisers Act of 1940. The Advisor is the wholly owned subsidiary of Barclays Global Investors, N.A. ("BGI"), a national banking association. BGI is an indirect subsidiary of Barclays Bank PLC of the United Kingdom. SEI Investments Distribution Co. ("Distributor"), a Pennsylvania corporation and broker-dealer registered under the Exchange Act, is the principal underwriter and distributor of Creation Unit Aggregations of iShares (see "Issuance of Creation Unit Aggregations" below). The Distributor is not affiliated with the Exchange or the Advisor. The Trust has appointed Investors Bank & Trust Co. ("IBT" or "Administrator") to act as administrator, custodian, fund accountant, transfer agent, and dividend disbursing agent for the Fund. The Exchange expects that performance of the Administrator's duties and obligations will be conducted within the provisions of the Investment Company Act and the rules thereunder. There is no affiliation between the Administrator and the Trust, the Advisor or the Distributor.

FTSE/Xinhua Index Ltd. ("FXI"),<sup>7</sup> the sponsor and compiler of the FTSE/Xinhua China 25 Index, is not affiliated with the Trust, the Administrator, the Distributor, or with the Advisor or its affiliates.<sup>8</sup> The Fund is not sponsored,

<sup>7</sup> FXI is a Hong Kong incorporated, joint venture company between FTSE, the global index company, and Xinhua Financial Network.

<sup>8</sup> Although FXI is not an affiliated person, or an affiliated person of an affiliated person of the Advisor, an employee of Barclays Global Investors, North Asia Limited ("BGLI"), an affiliate of the Advisor, currently serves as one of the 19 members of the FTSE/Xinhua Index Committee. The FTSE/Xinhua Index Committee provides practitioner input into the construction of the FTSE/Xinhua indices and independent oversight to ensure that relevant index construction rules are being followed. The Index Committee is currently composed of 19 members, four of whom are currently affiliated with non-U.S. broker-dealers. The role of the Index Committee is to review the appropriateness of existing index rules, to provide oversight to ensure that index rules are properly followed, and to recommend changes to the rules in response to changes in the underlying market that the index seeks to represent. Input from persons or experts (*i.e.*, practitioners) who have

<sup>7</sup> 17 CFR 200.30-3(a)(75).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4

offered or sold by FXI. FXI is not affiliated with a broker or dealer.

While the Advisor would manage the Fund, the Fund's Board of Directors would have overall responsibility for the Fund's operations. The composition of the Board is, and would be, in compliance with the requirements of Section 10 of the Investment Company Act. The Fund is subject to and must comply with Section 303A.06 of the Manual, which requires that the Fund have an audit committee that complies with Rule 10A-3 of the Exchange Act.<sup>9</sup>

#### (a) Operation of the Fund

The investment objective of the Fund will be to provide investment results that correspond generally to the price and yield performance of the Underlying Index. In seeking to achieve its investment objective, the Fund will utilize "passive" indexing investment strategies. The Fund may fully replicate its Underlying Index, but currently intends to use a "representative sampling" strategy to track its Underlying Index. A Fund utilizing a representative sampling strategy generally will hold a basket of the Component Securities of its Underlying Index, but it may not hold all of the Component Securities of its Underlying Index.

From time to time, adjustments may be made in the portfolio of the Fund in accordance with changes in the composition of the Underlying Index or to maintain compliance with requirements applicable to a RIC under

applicable industry knowledge of the underlying market that the index seeks to represent helps ensure that the published index rules and the implementation of such rules adequately reflect current developments in the underlying market. Any such input would be provided in accordance with the published index rules and methodology and any changes in index components would be implemented in accordance with such rules. The index compilation functions of FXI and the FTSE/Xinhua Index Committee are, and will remain, completely separate and independent of the portfolio management functions of BGFA. FXI and the FTSE/Xinhua Index Committee have adopted policies that prohibit the dissemination and use of confidential and proprietary information about the Index and have instituted procedures designed to prevent the improper dissemination and use of such information. The BGIL employee on the FTSE/Xinhua Index Committee is not and will not be involved in the operations of the Advisor or the Fund, and is and will not be involved in any capacity with the Fund's Board of Trustees. BGI and BGIL have adopted policies that limit the use of confidential and proprietary information about portfolio management decisions to those person whose duties require and permit them to have access to such information and have instituted procedures designed to prevent the improper dissemination and use of such information. BGIL and BGFA are separate legal entities and do not share employees, office space, trading floors or portfolio management systems.

<sup>9</sup> 17 CFR 240.10A-3.

the Code.<sup>10</sup> For example, if at the end of a calendar quarter a Fund would not comply with the RIC diversification tests, the Advisor would make adjustments to the portfolio to ensure continued RIC status.

The performance of the Fund and the Underlying Index will vary somewhat due to transaction costs, market impact, corporate actions (such as mergers and spin-offs) and timing variances. It is expected that, over time, the correlation between the Fund's performance and that of the Underlying Index, before fees and expenses, will be 95% or better. A figure of 100% would indicate perfect correlation. Any correlation of less than 100% is called "tracking error." Thus, as with existing iShares funds, BGFA represents that the expected tracking error of the Fund relative to the performance of its Underlying Index will be no more than 5%. The Fund's

<sup>10</sup> In order for the Fund to qualify for tax treatment as a RIC, it must meet several requirements under the Code. Among these is a requirement that, at the close of each quarter of the Fund's taxable year, (1) at least 50% of the market value of the Fund's total assets must be represented by cash items, U.S. government securities, securities of other RICs and other securities, with such other securities limited for the purpose of this calculation with respect to any one issuer to an amount not greater than 5% of the value of the Fund's assets and not greater than 10% of the outstanding voting securities of such issuer; and (2) not more than 25% of the value of its total assets may be invested in securities of any one issuer, or two or more issuers that are controlled by the Fund (within the meaning of Section 851(b)(4)(B) of the Code) and that are engaged in the same or similar trades or business (other than U.S. government securities of other RICs).

"Other securities" of an issuer are considered qualifying assets only if they meet the following conditions:

The entire amount of the securities of the issuer owned by the company is not greater in value than 5% of the value of the total assets of the company; and the entire amount of the securities of such issuer owned by the company does not represent more than 10% of the outstanding voting securities of such issuer.

Under the second diversification requirement, the "25% diversification limitation," a company may not invest more than 25% of the value of its assets in any one issuer or two issuers or more than the taxpayer controls.

Compliance with the above referenced RIC asset diversification requirements are monitored by the Adviser and any necessary adjustments to portfolio issuer weights will be made on a quarterly basis or as necessary to ensure compliance with RIC requirements. When an iShares Fund's Underlying Index itself is not RIC compliant, the Adviser generally employs a representative sampling indexing strategy (as described in the prospectus) in order to achieve the Fund's investment objective. Each iShare Fund's prospectus also gives such Fund additional flexibility to comply with the requirements of the Code and other regulatory requirements and to manage future corporate actions and index changes in smaller markets by investing a percentage of fund assets in securities that are not included in the Fund's Underlying Index or in American Depositary Receipts and Global Depositary Receipts representing such securities.

investment objectives, policies and investment strategies will be fully disclosed in its prospectus ("Prospectus") and statement of additional information ("SAI").

The Fund will not concentrate its investments (*i.e.*, hold 25% or more of its assets) in a particular industry or group of industries, except that the Fund will concentrate its investments to approximately the same extent that the Underlying Index is so concentrated. For purposes of this limitation, securities of the U.S. Government (including its agencies and instrumentalities), repurchase agreements collateralized by U.S. Government securities, and securities of state or municipal governments and their political subdivisions are not considered to be issued by members of any industry.

The Fund will at all times invest at least 80% of its assets in component securities of its Underlying Index ("Component Securities") and in depository receipts representing such Component Securities<sup>11</sup> and at least half of the remaining 20% of its assets in Component Securities or Depository Receipts or in stocks included in the Chinese market, but not included in the Underlying Index. To the extent the Fund invests in ADRs, they will be listed on a national securities exchange or Nasdaq. Other depository receipts, namely GDRs, will be listed on a foreign exchange. The Fund will not invest in any unlisted depository receipts or any listed depository receipts that the Advisor deems to be illiquid or for which pricing information is not readily available.<sup>12</sup> The Fund may also invest up to 10% of its assets in certain futures, options and swap contracts and cash and cash equivalents, including money market funds advised by the Advisor<sup>13</sup> and other exchange traded funds (including other iShares funds).<sup>14</sup> For example, the Fund may invest in securities not included in the Underlying Index in order to reflect prospective changes in the Underlying Index (such as future corporate actions

<sup>11</sup> For the purposes of this order, "Depository Receipts" are American Depositary Receipts ("ADRs") and Global Depositary Receipts ("GDRs") (collectively, "Depository Receipts").

<sup>12</sup> In addition, the Exchange represents that all Depository Receipts must be sponsored (with the exception of certain pre-1984 ADRs that are listed but unsponsored because they were grandfathered).

<sup>13</sup> See *In the Matter of Master Investment Portfolio, et al.*, Investment Company Act Release No. 25158 (September 18, 2001).

<sup>14</sup> The Fund, as well as any existing iShares Fund, is permitted to invest in shares of another iShares Fund to the extent that such investment is consistent with the Fund's investment objective, registration statement, and any applicable investment restrictions.

and index reconstitutions, additions and deletions).

The Fund intends to hold all of the securities in the Index that are listed on the Hong Kong Stock Exchange. The Fund does not intend to hold any B-shares which are listed in Chinese markets and included in the Underlying Index.<sup>15</sup> The Fund also does not currently intend to invest in the Depository Receipts but reserves the flexibility to do so.<sup>16</sup>

The Exchange believes that these requirements and policies prevent the Fund from being excessively weighted in any single security or small group of securities and significantly reduce concerns that trading in the Fund could become a surrogate for trading in unregistered securities.

(b) Description of the Fund and the Underlying Index (FTSE/Xinhua China 25 Index)

FXI is a Hong Kong incorporated, joint venture company between FTSE, the global index company, and Xinhua Financial Network ("XFN"). The company was created to facilitate the development of real-time indices for the Chinese market that can be used as performance benchmarks and as a basis for derivative trading and index tracking funds. FTSE is an independent company whose sole business is the creation and management of indices and associated data services. FTSE originated as a joint venture between the Financial Times and the London Stock Exchange. FTSE calculates over 60,000 indices daily, including more than 600 real-time indices. XFN is an independent financial information provider that focuses on China's markets. XFN is based in Hong Kong and Beijing.

#### Index Description

The Underlying Index is designed to represent the performance of the largest companies in the mainland China equity market that are available to international investors. The Underlying Index includes 25 of the largest and most heavily traded Chinese companies.<sup>17</sup> Securities in the Underlying Index are weighted based on the free-float adjusted total market value of their shares, so that securities with higher total market values generally

have a higher representation in the Underlying Index. Index constituents are screened for liquidity and weightings are capped to avoid over-concentration in any one stock. The inception date of the Underlying Index was March 2001.

As of December 31, 2003, the Underlying Index's top three holdings were BOC Hong Kong (Holdings), PetroChina and China Mobile and the Underlying Index's top three industries were oil and gas, telecommunications services and banks.

As of August 31, 2004, the Underlying Index's components had a total market capitalization of approximately \$154 billion and a float-adjusted market capitalization of approximately \$41 billion.<sup>18</sup> The average total market capitalization was approximately \$6.2 billion and the average float-adjusted market capitalization was approximately \$1.6 billion. The ten largest constituents represented approximately 60.8% of the index weight. The 5 highest weighted stocks, which represented 40.2% of the index weight, had an average daily trading volume in excess of 47.5 million shares during the past 2 months. All of the component stocks traded at least 250,000 shares in each of the previous 6 months.

#### Index Methodology

*Component Selection Criteria.* The FTSE/Xinhua China 25 Index is rule-based and is monitored by a governing committee. The FTSE/Xinhua China 25 Index Committee ("Index Committee") is responsible for conducting the quarterly review of constituents of the Underlying Index and for making changes in accordance with applicable procedures. The Index Committee is currently composed of 19 members, four of whom are currently affiliated with non-U.S. broker-dealers, including an employee of BGIL. Any such input would be provided in accordance with the published index rules and methodology and any changes in index components would be implemented in accordance with such rules.<sup>19</sup>

FTSE has represented that the FTSE, FXI, and the Index Committee have adopted policies that prohibit the

dissemination and use of confidential and proprietary information about the Underlying Index and have instituted procedures designed to prevent the improper dissemination of the use of such information. BGI and BGIL have made similar representations with respect to the Index Committee member who is a BGIL employee.

*Eligibility.* Each security included in the Underlying Index will be a current constituent of the FTSE All-World Index. All classes of equity securities in issue are eligible for inclusion in the Underlying Index subject to conforming with free-float and liquidity restrictions. H shares, Red Chip shares and B shares are eligible for inclusion in the Underlying Index.<sup>20</sup> As of September 24, 2004, only one constituent was B shares (approximately 1% of the Underlying Index). FXI expects to eventually eliminate B shares from the Underlying Index.

*Float-Adjusted Market Capitalization.* When calculating a company's index weights, individual constituents' shares held by governments, corporations, strategic partners, or other control groups are excluded from the company's shares outstanding. Shares owned by other companies are also excluded regardless of whether such companies are index constituents. Where a foreign investment limit exists at the sector or company level, the constituent's weight will reflect either the foreign investment limit or the percentage float, whichever is the more restrictive.<sup>21</sup>

Stocks are screened to ensure there is sufficient liquidity to be traded. Factors in determining liquidity include the

<sup>20</sup> "H" Shares—H shares are incorporated in China and listed and traded on the Hong Kong exchange. They are quoted and traded in Hong Kong and U.S. dollars. Like other securities trading on the Hong Kong Stock Exchange, there are no restrictions on who can trade H shares.

"Red Chip" Shares—Red Chip shares are incorporated in Hong Kong and trade on the Hong Kong stock exchange. They are quoted in Hong Kong dollars. Red Chip companies may be substantially owned directly or indirectly by the Chinese Government and have the majority of their business interested in mainland China.

H shares and Red Chip shares trade on the Hong Kong Stock Exchange, typically on a T+2 basis, through a central book-entry system that effectively guarantees settlement of exchange trades by broker-dealers.

"B" Shares—B shares are incorporated in China and trade on either the Shanghai or Shenzhen stock exchanges. They are quoted in U.S. dollars on the Shanghai stock exchange and Hong Kong dollars on the Shenzhen stock exchange. They can be traded by non-residents of the Peoples' Republic of China and also residents of the People's Republic of China with appropriate foreign currency dealing accounts. There is not a true "delivery versus payment" settlement for B foreign depositaries or local banks.

<sup>21</sup> The Exchange understands that there are no foreign ownership limits with the current constituents to the FTSE/Xinhua China 25 Index and that, as such, the percentage float will be used.

<sup>15</sup> See *infra* note 20.

<sup>16</sup> Telephone conversation between Mike Cavalier, Associate General Counsel, NYSE, Richard Morris, Senior Counsel, BGI, and Florence Harmon, Senior Special Counsel, Division, Commission, on October 7, 2004.

<sup>17</sup> The Exchange provided additional information regarding the Index and a complete list of its components as of August 31, 2004 in Exhibit A to its Form 19b-4 submission.

<sup>18</sup> Float-adjusted market capitalization includes shares available in the market for public investment, and reflects free float adjustments to the Index in accordance with FTSE's free float rules. Additional information regarding FTSE's free float adjustment methodology is available on [www.ftse.com](http://www.ftse.com).

<sup>19</sup> Telephone conversation between Mike Cavalier, Associate General Counsel, NYSE, Richard Morris, Senior Counsel, BGI, and Florence Harmon, Senior Special Counsel, Division, Commission, on October 7, 2004.

availability of current and reliable price information and the level of trading volume relative to shares outstanding. Value traded and float turnover are also analyzed on a monthly basis to ensure ample liquidity. Fundamental analysis is not part of the selection criteria for inclusion or exclusion of stocks from the Underlying Index. The financial and operating condition of a company are not analyzed.

**Index Maintenance and Issue Changes.** The Index Committee is responsible for undertaking the review of the Underlying Index and for approving changes of constituents in accordance with the index rules and procedures. The FTSE Global Classification Committee is responsible for the industry classification of constituents of the Underlying Index within the FTSE Global Classification System. The FTSE Global Classification Committee may approve changes to the FTSE Global Classification System and Management Rules. FXI appoints the Chairman and Deputy Chairman of the Index Committee. The Chairman chairs meetings of the Committee and represents the Committee in outside meetings. Adjustments to reflect a major change in the amount or structure of a constituent company's issued capital will be made before the start of the index calculation on the day on which the change takes effect. Adjustments to reflect less significant changes will be implemented before the start of the index calculation on the day following the announcement of the change. All adjustments are made before the start of the index calculations on the day concerned, unless market conditions prevent this.

A company will be inserted into the Underlying Index at the periodic review if it rises to 15th position or above when the eligible companies are ranked by full market value before the application of any investibility weightings. A company in the Underlying Index will be deleted at the periodic review if it falls to 36th position or below when the eligible companies are ranked by full market value before the application of any investibility weightings. Any deletion to the Underlying Index will simultaneously entail an addition to the Underlying Index to maintain 25 index constituents at all times.

**Revisions to the Float Adjustments.** The Underlying Index is reviewed quarterly for changes in free float. These reviews will coincide with the quarterly reviews undertaken of the Underlying Index as a whole. Implementation of any changes will be after the close of the index calculation on the third Friday in January, April, July and October.

**Quarterly Index Rebalancing.** The quarterly review of the Underlying Index constituents takes place in January, April, July and October. Any changes will be implemented on the next trading day following the third Friday of the same month of the review meeting. Details of the outcome of the review and the dates on which any changes are to be implemented will be published as soon as possible after the Index Committee meeting has concluded its review.

**Index Availability.** The Underlying Index is calculated in real time and published every minute during the index period (09:15–16:00 Local Hong Kong Time) or (17:15–24:00 U.S. PDT). It is available, by subscription, published every minute, directly from FTSE and from the following vendors: Reuters, Bloomberg, Telekurs, FTID and LSE/Proquote. The end of day index value, based on last sale prices,<sup>22</sup> is distributed at 16:15 (Local Hong Kong Time). This end of day index value also will be made available to the Financial Times Asia edition and other major newspapers and will be available at the FTSE Index Services Web site: <http://www.ftse.com>. The Underlying Index is calculated using Hong Kong Stock Exchange trade prices and Reuter's real-time spot currency rates, as described below. A total return index value that takes into account reinvested dividends is published daily at the end of day. The Underlying Index is not calculated on days that are holidays in Hong Kong.

The daily closing index value, historical values, constituents' weighting, constituents' market capitalization and daily percentage changes are publicly available from <http://www.ftsexinhua.com>. All corporate actions and rules relating to the management of the indices are also available from the Web site.

**Exchange Rates and Pricing.** FXI calculates the value of the Underlying Index using Reuters real-time foreign exchange spot rates and local stock exchange real-time, last sale security prices. The Underlying Index is calculated in Hong Kong Dollars, using Hong Kong Stock Exchange trade prices. Non-Hong Kong Dollar denominated constituent prices are converted to Hong Kong Dollars in order to calculate the value of the Underlying Index.<sup>23</sup> Thus,

<sup>22</sup> Telephone conversation between Mike Cavalier, Associate General Counsel, NYSE, Richard Morris, Senior Counsel, BGI, and Florence Harmon, Senior Special Counsel, Division, Commission, on October 7, 2004.

<sup>23</sup> As stated, the Index provider has announced its intention to remove the B Share component trading on either the Shanghai or Shenzhen stock exchanges in the near future.

the Reuter's foreign exchange rates and Hong Kong Stock Exchange prices received at the closing time of the Underlying Index will be used to calculate the final Underlying Index value each day.

#### (c) Issuance of Creation Unit Aggregations

The Exchange notes that, according to the Application, the issuance and redemption of Creation Unit Aggregations will operate in a manner identical to that of the funds that are the subject of the Prior Order.<sup>24</sup>

(i) *In General.* The Fund will issues shares (the "iShares") on a continuous offering basis in groups of 50,000 or more. These "groups" of shares are called "Creation Unit Aggregations." The Fund will issue and redeem iShares only in Creation Unit Aggregations.<sup>25</sup> The anticipated price at which the iShares will initially trade is approximately \$50.

The NAV per share of the Fund is determined as of the close of the regular trading session on the Exchange on each day that the Exchange is open. The Trust sells Creation Unit Aggregations of the Fund only on business days at the next determined NAV of the Fund. Creation Unit Aggregations generally will be issued by the Fund in exchange for the in-kind deposit of equity securities designated by the Advisor to correspond generally to the price and yield performance of the Fund's Underlying Index ("Deposit Securities") and a specified cash payment. Creation Unit Aggregations generally will be redeemed by the Fund in exchange for portfolio securities of the Fund ("Fund Securities") and a specified cash payment. Fund Securities received on redemption may not be identical to Deposit Securities deposited in connection with creations of Creation Unit Aggregations for the same day.

All orders to purchase iShares in Creation Unit Aggregations must be placed through an Authorized Participant. An Authorized Participant must be either a "Participating Party", i.e., a broker-dealer or other participant in the clearing process through the National Securities Clearing Corporation ("NSCC") Continuous Net Settlement System ("Clearing Process"), a clearing agency that is registered with the SEC, or a Depository Trust Company ("DTC") participant, and in each case, must enter into a Participant Agreement. The Fund is currently imposing transaction fees in

<sup>24</sup> See *supra* note 5.

<sup>25</sup> Each Creation Unit Aggregation will consist of 50,000 or more iShares and the estimated initial value per Creation Unit Aggregation will be approximately \$2,500,000.

connection with creation and redemption transactions.<sup>26</sup>

(ii) *In-Kind Deposit of Portfolio Securities*. Payment for Creation Unit Aggregations will be made by the purchasers generally by an in-kind deposit with the Fund of the Deposit Securities together with an amount of cash ("Balancing Amount") specified by the Advisor in the manner described below. The Balancing Amount is an amount equal to the difference between (1) the NAV (per Creation Unit Aggregation) of the Fund and (2) the total aggregate market value (per Creation Unit Aggregation) of the Deposit Securities (such value referred to herein as the "Deposit Amount"). The Balancing Amount serves the function of compensating for differences, if any, between the NAV per Creation Unit Aggregation and that of the Deposit Amount.<sup>27</sup> The deposit of the requisite Deposit Securities and the Balancing Amount are collectively referred to herein as a "Fund Deposit." The Advisor will make available to the market through the NSCC on each business day, prior to the opening of trading on the Exchange (currently 9:30 a.m. Eastern Time), the list of the names and the required number of shares of each Deposit Security included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund. The Fund Deposit will be applicable to the Fund (subject to any adjustments to the Balancing Amount, as described below) in order to effect purchases of Creation Unit Aggregations of the Fund until such time as the next-announced Fund Deposit composition is made available.

The identity and number of shares of the Deposit Securities required for the Fund Deposit for the Fund will change from time to time. The composition of the Deposit Securities may change in response to adjustments to the weighting or composition of the constituent securities in the Underlying Index. In addition, the Trust reserves the right to permit or require the substitution of an amount of cash—*i.e.*, a "cash in lieu" amount—to be added to the Balancing Amount to replace any Deposit Security that may not be available in sufficient quantity for

delivery or that may not otherwise be eligible for transfer. The Trust also reserves the right to permit or require a "cash in lieu" amount where the delivery of the Deposit Security by the Authorized Participant would be restricted under the securities laws or where the delivery of the Deposit Security to the Authorized Participant would result in the disposition of the Deposit Security by the Authorized Participant becoming restricted under the securities laws, or in certain other situations. The adjustments described above will reflect changes known to the Advisor on the date of announcement to be in effect by the time of delivery of the Fund Deposit, in the composition of the Underlying Index or resulting from certain corporate actions.

(d) *Availability of Information Regarding iShares and the Underlying Index*

On each business day the list of names and amount of each security constituting the current Deposit Securities of the Fund Deposit and the Balancing Amount effective as of the previous business day, per outstanding share of the Fund, will be made available. An amount per iShare representing the sum of the estimated Balancing Amount effective through and including the previous business day, plus the current value of the Deposit Securities in U.S. dollars, on a per iShare basis (the "Intra-day Optimized Portfolio Value" or "IOPV") will be calculated by an independent third party (the "Value Calculator"), such as Bloomberg L.P., every 15 seconds during the Exchange's regular trading hours and disseminated every 15 seconds on the Consolidated Tape.

The IOPV reflects the current value of the Deposit Securities and the Balancing Amount. The IOPV also reflects changes in currency exchange rates between the U.S. dollar and the applicable home foreign currency.

Since the Fund will utilize a representative sampling strategy, the IOPV may not reflect the value of all securities included in the Underlying Index. In addition, the IOPV does not necessarily reflect the precise composition of the current portfolio of securities held by the Fund at a particular point in time. Therefore, the Exchange states that the IOPV on a per Fund share basis disseminated during the Exchange's trading hours should not be viewed as a real time update of the NAV of the Fund, which is calculated only once a day. While the IOPV disseminated by the Exchange at 9:30 a.m. New York Time is expected to be generally very close to the most recently

calculated Fund NAV on a per-Fund-share basis, it is possible that the value of the portfolio of securities held by the Fund may diverge from the Deposit Securities values during any trading day. In such case, the IOPV will not precisely reflect the value of the Fund portfolio.

However, during the trading day, the IOPV can be expected to closely approximate the value per Fund share of the portfolio of securities for the Fund except under unusual circumstances (*e.g.*, in the case of extensive rebalancing of multiple Component Securities at the same time by the Advisor).

The Exchange believes that dissemination of the IOPV based on the Deposit Securities provides additional information regarding the Fund that is not otherwise available to the public and is useful to professionals and investors in connection with Fund shares trading on the Exchange or the creation or redemption of Fund shares. Since the trading hours of the Hong Kong Stock Exchange do not overlap with regular trading hours in the U.S., it is expected that the Value Calculator, when calculating IOPV, will utilize closing prices (in applicable foreign currency prices) in the principal foreign market for the securities in the Fund portfolio (*i.e.*, the Hong Kong Stock Exchange), and convert the prices to U.S. dollars.

In addition, FTSE will disseminate a value for the Underlying Index once each trading day, based on closing prices in the Hong Kong Stock Exchange. The NAV for the Fund will be calculated and disseminated daily. The Fund NAV will be calculated by IBT. IBT will disseminate the information to BGI, SEI and others, including the NYSE. The Fund NAV will be published in a number of places, including iShares.com and on the Consolidated Tape.

The Underlying Index currently uses the Reuters foreign exchange rate at the close of the index (4 p.m. Hong Kong Time) to compute final index values. The Fund intends to use Reuters/WI foreign exchange rates at 4 p.m. London Time. There will also be disseminated a variety of data with respect to the Fund on a daily basis by means of CTA and CQ High Speed Lines, which will be made available prior to the opening of trading on the Exchange. Information with respect to recent NAV, shares outstanding, estimated cash amount and total cash amount per Creation Unit Aggregation will be made available prior to the opening of the Exchange. In addition, the Web site for the Trust, [www.ishares.com](http://www.ishares.com), which will be

<sup>26</sup> Telephone conversation between Mike Cavalier, Associate General Counsel, NYSE, Richard Morris, Senior Counsel, BGI, and Florence Harmon, Senior Special Counsel, Division, Commission, on October 7, 2004.

<sup>27</sup> Where the NAV (per Creation Unit Aggregation) of the Fund exceeds the Deposit Amount, the purchaser pays the corresponding balancing Amount to the Fund. Where, by contrast, the Deposit Amount exceeds the NAV (per Creation Unit Aggregation) of the Fund, the Balancing Amount is paid by the Fund to the purchaser.

publicly accessible at no charge, will contain the following information, on a per iShare basis, for the Fund: (a) The prior business day's NAV and the mid-point of the bid-ask price at the time of calculation of such NAV ("Bid/Ask Price"),<sup>28</sup> and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

The closing prices of the Fund's Deposit Securities are readily available from, as applicable, the relevant exchanges, automated quotation systems, published or other public sources in the relevant country, or on-line information services such as Bloomberg or Reuters. The exchange rate information required to convert such information into U.S. dollars is also readily available in newspapers and other publications and from a variety of on-line services.

#### (e) Redemption of iShares

Creation Unit Aggregations of the Fund will be redeemable at the NAV next determined after receipt of a request for redemption. Creation Unit Aggregations of the Fund generally will be redeemed in-kind, together with a balancing cash payment (although, as described below, Creation Unit Aggregations may sometimes be redeemed for cash). The value of the Fund's redemption payments on a Creation Unit Aggregation basis will equal the NAV per the appropriate number of Fund shares. Owners of iShares may sell their iShares in the secondary market, but must accumulate enough iShares to constitute a Creation Unit Aggregation in order to redeem through the Fund. Redemption orders must be placed by or through an Authorized Participant.

Creation Unit Aggregations of the Fund generally will be redeemable on any business day in exchange for Fund Securities and the Cash Redemption Payment (defined below) in effect on the date a request for redemption is made. The Advisor will publish daily through NSCC the list of securities which a creator of Creation Unit Aggregations must deliver to the Fund ("Creation List") and which a redeemer will receive from the Fund ("Redemption List"). The Creation List is identical to the list of the names and the required

numbers of shares of each Deposit Security included in the current Fund Deposit.

In addition, just as the Balancing Amount is delivered by the purchaser of Creation Unit Aggregations to the Fund, the Trust will also deliver to the redeeming beneficial owner in cash the "Cash Redemption Payment." The Cash Redemption Payment on any given business day will be an amount calculated in the same manner as that for the Balancing Amount, although the actual amounts may differ if the Fund Securities received upon redemption are not identical to the Deposit Securities applicable for creations on the same day.<sup>29</sup> To the extent that the Fund Securities have a value greater than the NAV of iShares being redeemed, a cash payment equal to the differential is required to be paid by the redeeming beneficial owner to the Fund. The Trust may also make redemptions in cash in lieu of transferring one or more Fund Securities to a redeemer if the Trust determines, in its discretion, that such method is warranted due to unusual circumstances. An unusual circumstance could arise, for example, when a redeeming entity is restrained by regulation or policy from transacting in certain Fund Securities, such as the presence of such Fund Securities on a redeeming investment banking firm's restricted list.

#### (f) Dividends and Distributions

Dividends from net investment income will be declared and paid to beneficial owners of record at least annually by the Fund. Distributions of realized securities gains, if any, generally will be declared and paid once a year, but the Fund may make distributions on a more frequent basis to comply with the distribution requirements of the Code and consistent with the Investment Company Act.

Dividends and other distributions on iShares of the Fund will be distributed on a pro rata basis to beneficial owners of such iShares. Dividend payments will be made through the Depository and the DTC Participants to beneficial owners then of record with amounts received from the Fund.

The Trust currently does not intend to make the DTC book-entry Dividend Reinvestment Service ("Service") available for use by beneficial owners for reinvestment of their cash proceeds, but certain individual brokers may make the Service available to their clients.<sup>30</sup>

Beneficial owners of iShares will receive all of the statements, notices, and reports required under the Investment Company Act and other applicable laws. They will receive, for example, annual and semi-annual reports, written statements accompanying dividend payments, proxy statements, annual notifications detailing the tax status of distributions, IRS Form 1099-DIVs, etc. Because the Trust's records reflect ownership of iShares by DTC only, the Trust will make available applicable statements, notices, and reports to the DTC Participants who, in turn, will be responsible for distributing them to the beneficial owners.

#### (g) Other Issues

(1) *Criteria for Initial and Continued Listing.* iShares are subject to the criteria for initial and continued listing of ICUs in Section 703.16 of the Manual. A minimum of two Creation Units (100,000 iShares) will be required to be outstanding at the start of trading, his minimum number of iShares required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously traded series of ICUs.

The Exchange believes that the proposed minimum number of iShares outstanding at the start of trading is sufficient to provide market liquidity and to further the Trust's objective to seek to provide investment results that correspond generally to the price and yield performance of the Underlying Index.

(2) *Original and Annual Listing Fees.* The original listing fee applicable to the Fund for listing on the Exchange is \$5,000, and the annual continuing listing fee will be \$2,000.

(3) *Stop and Stop Limit Orders.* Commentary .30 to Exchange Rule 13 provides that stop and stop limit orders in an ICU shall be elected by a quotation, but specifies that if the electing bid or an offer is more than 0.10 points away from the last sale and is for the specialist's dealer account, prior Floor Official approval is required for the election to be effective. This rule applies to ICUs generally.

(4) *Rule 460.10.* Rule 460.10 generally precludes certain business relationships

broker to ascertain the availability and a description of the Service through such broker. The SAI will also caution interested beneficial owners that they should note that each broker may require investors to adhere to specific procedures and timetables in order to participate in the Service and such investors should ascertain from their broker such necessary details. iShares acquired pursuant to the Service will be held by the beneficial owners in the same manner, and subject to the same terms and conditions, as for original ownership of iShares.

<sup>28</sup> The Bid-Ask Price of the Fund is determined using the highest bid and lowest offer on the Exchange as of the time of calculation of the Fund's NAV.

<sup>29</sup> See discussion under Section II.A.1(c)(ii) "In-Kind Deposit of Portfolio Securities," above.

<sup>30</sup> The SAI will inform investors of this fact and direct interested investors to contact such investor's

between an issuer and the member or member organization or any other member, allied member, or approved person or officer or employee of the member organization, such as participating in a proxy contest or becoming a director of the company, if the member specializes in the issuer's securities. Exceptions in the Rule permit specialists in Fund shares to enter into Creation Unit transactions through the Distributor to facilitate the maintenance of a fair and orderly market. A specialist Creation Unit transaction may only be effected on the same terms and conditions as any other investor, and only at the NAV of the Fund shares. A specialist may acquire a position in excess of 10% of the outstanding issue of the Fund shares, the redemption of which would not result in a position, directly or indirectly, in any equity security in which the specialist is registered exceeding the 10% threshold. However, a specialist registered in the Fund shares may purchase and redeem Fund shares from the investment company, as appropriate to facilitate the maintenance of a fair and orderly market in the subject security.

(5) *Prospectus Delivery.* The Commission has granted the Trust an exemption from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act.<sup>31</sup> Any product description used in reliance on the Section 24(d) exemptive order will comply with all representations made therein and all conditions thereto. The Exchange, in an Information Circular to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, of the prospectus or product description delivery requirements applicable to the Fund.

(6) *Information Circular.* The Exchange will distribute an information circular to its members in connection with the trading of the Fund. The circular will discuss the special characteristics and risks of trading this type of security. Specifically, the circular, among other things, will discuss what the Fund is, how Fund shares are created and redeemed, the requirement that members and member firms deliver a prospectus or product description to investors purchasing shares of the Fund prior to or concurrently with the confirmation of a transaction, applicable Exchange rules, dissemination information, trading information and the applicability of

suitability rules, including NYSE Rule 405 (Diligence as to Accounts). The circular will also discuss exemptive, no-action and interpretive relief granted by the Commission from certain rules under the Exchange Act.

(7) *Trading Halts.* In order to halt the trading of the Fund, the Exchange may consider, among other things, factors such as the extent to which trading is not occurring in Component Securities and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Fund shares is subject to trading halts caused by extraordinary market volatility pursuant to Exchange Rule 80B.

(8) *Due Diligence.* The Exchange represents that the information circular to members will note, for example, Exchange responsibilities including that before an Exchange member, member organization, or employee thereof recommends a transaction in the Fund, a determination must be made that the recommendation is in compliance with all applicable Exchange and Federal rules and regulations, including due diligence obligations under Exchange Rule 405 (Diligence as to Accounts).

(9) *Purchases and Redemptions in Creation Unit Size.* In the Information Circular referenced above, members and member organizations will be informed that procedures for purchases and redemptions of iShares in Creation Unit Size are described in the Fund Prospectus and SAI, and that iShares are not individually redeemable but are redeemable only in Creation-Unit-size aggregations or multiples thereof.

(10) *Surveillance.* Exchange surveillance procedures applicable to trading in the proposed iShares are comparable to those applicable to other ICUs currently trading on the Exchange. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Fund. The Exchange's current trading surveillances focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange represents that it is able to obtain information regarding trading in both the Fund shares and the Component Securities by its members on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates

of the ISG, including the Hong Kong Stock Exchange.

(11) *Hours of Trading/Minimum Price Variation.* The Fund will trade on the Exchange until 4:15 p.m. (Eastern time) each business day. The minimum price variation for quoting will be \$.01.

#### Statutory Basis

NYSE believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act<sup>32</sup> requiring that an exchange have rules that are designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2004-55 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2004-55. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

<sup>31</sup> See *In the Matter of iShares, Inc., et al.*, Investment Company Act Release No. 25623 (June 25, 2002).

<sup>32</sup> 15 U.S.C. 78f(b)(5).



comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2004-55 and should be submitted on or before November 5, 2004.

#### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder, applicable to a national securities exchange.<sup>33</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act<sup>34</sup> and will promote just and equitable principles of trade, and facilitate transactions in securities, and, in general, protect investors and the public interest.<sup>35</sup>

The Commission believes that the NYSE's proposal should advance the public interest by providing investors with increased flexibility in satisfying their investment needs and by allowing them to purchase and sell Fund shares

at negotiated prices throughout the business day that generally track the price and yield performance of the targeted Underlying Index.<sup>36</sup>

Furthermore, the Commission believes that the proposed rule change raises no issues that have not been previously considered by the Commission. The Fund is similar in structure and operation to exchange-traded index funds that the Commission has previously approved for listing and trading on national securities exchanges under Section 19(b)(2) of the Exchange Act.<sup>37</sup> The stocks included in the Underlying Index are among the stocks with the highest liquidity and market capitalization in the Chinese markets. Further, with respect to each of the following key issues, the Commission believes that the Fund satisfies established standards.

##### A. Fund Characteristics

Similar to other previously-approved, exchange-listed index fund shares, the Commission believes that the proposed Fund will provide investors with an alternative to trading a range of securities on an individual basis and will give investors the ability to trade a product representing an interest in a portfolio of securities designed to reflect substantially the Underlying Index. The estimated cost of individual shares in the Fund, approximately \$50, should make them attractive to individual retail investors who wish to hold a security representing the performance of a portfolio of stocks. In addition, investors will be able to trade shares in the Fund continuously throughout the business day in secondary market transactions at negotiated prices.<sup>38</sup> Accordingly, the proposed Fund will allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors; and (3) reduce transaction costs for trading a portfolio of securities.

The Commission believes that the proposed Fund is reasonably designed to provide investors with an investment vehicle that substantially reflects in

value the performance of the Underlying Index.<sup>39</sup>

Moreover, the Commission finds that, although the value of the Fund's shares will be derived from and based on the value of the securities and cash held in the Fund, the Fund is not leveraged. Accordingly, the level of risk involved in the purchase or sale of Fund shares is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for shares in the Fund is based on a portfolio of securities. The Commission notes that the Fund will at all times invest at least 80% of its assets in Component Securities of its Underlying Index and in Depositary Receipts representing such securities and at least half of the remaining 20% of its assets in such securities or in stocks included in the Chinese market, but not included in the Underlying Index.<sup>40</sup> As noted above, the Fund will use a representative portfolio sampling strategy to attempt to track its Underlying Index. Although a representative sampling strategy entails some risk of tracking error, the Advisor will seek to minimize tracking error. It is expected that the Fund will have a tracking error relative to the performance of its Underlying Index of no more than 5%.

The Advisers to the Fund may attempt to reduce tracking error by using a variety of investment instruments, including futures contracts, repurchase agreements, options, swaps and currency exchange contracts; however, these instruments will not constitute more than 10% of the Funds' assets.<sup>41</sup> The Exchange represents, however, that the Fund will not use these instruments to leverage, or borrow against, its securities holdings or for speculative purposes. Also, the Exchange represents that the Fund will

<sup>39</sup> The FTSE/Xinhua China 25 Index is a free float-adjusted market capitalization weighted index that is designed to represent the performance of the largest companies in the mainland China equity market that are available to international investors. As of August 31, 2004, its constituents had a total market capitalization of approximately \$154 billion and a float-adjusted market capitalization of approximately \$41 billion.

<sup>40</sup> The Exchange states that, to the extent the Fund invests in Depositary Receipts, any ADRs will be listed on a national securities exchange or Nasdaq. Other Depositary Receipts, e.g., GDRs, will be listed on a foreign exchange. The Fund will not invest in any unlisted depositary receipts or any listed depositary receipts that the Advisor deems to be illiquid or for which pricing information is not readily available. The Fund does not currently intend to invest in ADRs and GDRs but has retained the flexibility to do so. Rather, the Fund currently intends to hold all of the securities in the Index that are listed on the Hong Kong Stock Exchange.

<sup>41</sup> See discussion under Section II.A.1(a) "Operation of Fund," above.

<sup>33</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>34</sup> 15 U.S.C. 78f(b)(5).

<sup>35</sup> Pursuant to Section 6(b)(5) of the Exchange Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

<sup>36</sup> The Commission notes that, as is the case with similar previously approved exchange traded funds, investors in the Fund can redeem shares in Creation-Unit-size aggregations only. See, e.g., Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000) (File No. SR-NYSE-00-46); Exchange Act Release No. 50189 (August 12, 2004); 69 FR 51723 (August 20, 2004) (File No. SR-Amex-2004-05).

<sup>37</sup> 15 U.S.C. 78s(b)(2).

<sup>38</sup> Because of the potential arbitrage opportunities, the Commission believes that Fund shares will not trade at a material discount or premium in relation to their NAV.



not concentrate its investments in any particular industry or group of industries, except to the extent that the Underlying Index concentrates in the stocks of a particular industry or industries. As described above, the Underlying Index is designed to represent the performance of the largest companies in the mainland China equity market that are available to international investors and includes 25 of the largest and most heavily traded Chinese companies.<sup>42</sup> FXI may adjust the Underlying Index based on annual full country index reviews, quarterly index reviews, and ongoing event-related changes.<sup>43</sup> Changes to the Underlying Index are made public via print and electronic media, and, in particular, through press releases on the FTSE Web site.

The Commission believes that the market capitalization and liquidity of the Component Securities is such that an adequate level of liquidity exists so that the Fund shares should not be susceptible to manipulation.<sup>44</sup> Also, the Commission does not believe that the Fund will be so highly concentrated such that it becomes a surrogate for

trading unregistered foreign securities on the Exchange.

While the Commission believes that these requirements should help to reduce concerns that the Fund could become a surrogate for trading in a single or a few unregistered stocks, if the Fund's characteristics changed materially from the characteristics described herein, the Fund would not be in compliance with the listing and trading standards approved herein, and the Commission would expect the NYSE to file a proposed rule change pursuant to Rule 19b-4 of the Exchange Act.

#### *B. Disclosure*

The Exchange represents that it will circulate an information circular detailing applicable prospectus and product description delivery requirements. The circular also will address NYSE members' responsibility to deliver a prospectus or product description to all investors and highlight the characteristics of the Funds. The circular will also remind members of their suitability obligations, including NYSE Rule 405 (Diligence as to Accounts).<sup>45</sup> For example, the information circular will also inform members and member organizations that Fund shares are not individually redeemable, but are redeemable only in Creation-Unit-size aggregations or multiples thereof as set forth in the Fund Prospectus and SAI.<sup>46</sup>

#### *C. Dissemination of Fund Information*

With respect to pricing, each day, the NAV for the Fund will be calculated and disseminated by IBT, to various sources, including the NYSE, and made available on iShares.com and the Consolidated Tape.<sup>47</sup>

During each day the NYSE is open for business, the Exchange states that the IOPV of the Underlying Index will be disseminated at regular intervals (every 15 seconds) on the Consolidated Tape. The IOPV will be updated throughout the NYSE trading day to reflect fluctuations in exchange rates between the U.S. dollar and the Hong Kong dollar. The underlying Index value based on the sale reporting in the

foreign market of the Index constituents will be disseminated every 60 seconds throughout the foreign market trading day, including, by subscription, directly from FTSE and from the following vendors: Reuters, Bloomberg, Telekurs, FTID and LSE/Proquote. An end of day closing value for the Index, based on last sale reporting in the foreign market, will be available throughout the NYSE trading day on <http://www.ftsexinhua.com>, along with other Index information such as historical values, composition and component weighting. The Commission believes that this information will help an investor to determine whether, and to what extent, iShares may be selling at a premium or a discount to NAV.

The Exchange will also be disseminating a variety of data with respect to the Fund on a daily basis by means of CTA and CQ High Speed Lines, which will be made available prior to the opening of trading on the Exchange. Information with respect to recent NAV, shares outstanding, estimated cash amount and total cash amount per Creation Unit Aggregation will be made available prior to the opening of the Exchange. In addition, the Web site for the Trust, [www.ishares.com](http://www.ishares.com), which will be publicly accessible at no charge, will contain the following information, on a per iShare basis, for the Fund: (a) The prior business day's NAV and the mid-point of the bid-ask price<sup>48</sup> at the time of calculation of such NAV ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

The closing prices of the Fund's Deposit Securities are available from, as applicable, the relevant exchanges, automated quotation systems, published or other public sources in the relevant country, or on-line information services such as Bloomberg or Reuters. The exchange rate information required to convert such information into U.S. dollars is also readily available in newspapers and other publications and from a variety of on-line services. In addition, the Commission notes that the iShares Web site is and will be publicly accessible at no charge, and will contain the Fund's NAV as of the prior business day, the Bid-Asked Price, and a

<sup>42</sup> The Commission notes that securities in the Underlying Index are weighted based on the free-float adjusted total market value of their shares, so that securities with higher total market values generally have a higher representation in the Underlying Index. Index constituents are screened for liquidity and weightings are capped to avoid over-concentration in any one stock.

<sup>43</sup> The Commission notes that although one employee of an affiliate of the Advisor serves on the FTSE/Xinhua Index Committee and provides input to help ensure that the published index rules and the implementation of such rules adequately reflect current developments in the underlying market, such employee is and will not be involved in the operations of the Advisor or the Fund or be involved in any capacity with the Fund's Board of Trustees. Moreover, the index compilation functions of FXI and the FTSE/Xinhua Index Committee are, and will remain, completely separate and independent of the portfolio management functions of BGFA. FXI and the FTSE/Xinhua Index Committee have adopted policies that prohibit the dissemination and use of confidential and proprietary information about the Index and have instituted procedures designed to prevent the improper dissemination and use of such information. BGI and BGIL have adopted policies that limit the use of confidential and proprietary information about portfolio management decisions to those persons whose duties require and permit them to have access to such information and have instituted procedures designed to prevent the improper dissemination and use of such information.

<sup>44</sup> The Exchange states that as of August 31, 2004, the ten largest constituents represented approximately 60.8% of the index weight. The 5 highest weighted stocks, which represented 40.2% of the index weight, had an average daily trading volume in excess of 47.5 million shares during the past 2 months. All of the component stocks traded at least 250,00 shares in each of the previous 6 months.

<sup>45</sup> NYSE Rule 405 generally requires that members use due diligence to learn the essential facts relative to every customer, order or account accepted.

<sup>46</sup> See discussion under Section II.A.1(a) "Operation of Fund," above. The Exchange has represented that the information circular will also discuss exemptive, no-action, and interpretive relief granted by the Commission from certain rules under the Exchange Act.

<sup>47</sup> The index currently uses the Reuters foreign exchange rate at the close of the index (4 p.m. Hong Kong Time) to compute final index values. The Fund intends to use Reuters/WM foreign exchange rates at 4 p.m. London Time.

<sup>48</sup> The Bid-Ask Price of the Fund is determined using the highest bid and lowest offer on the Exchange as of the time of calculation of the Fund's NAV.

calculation of the premium or discount of the Bid-Asked Price in relation to the closing NAV.<sup>49</sup>

Based on the representations made in the NYSE proposal, the Commission believes that pricing and other important information about the Fund is adequate and consistent with the Exchange Act.

#### *D. Listing and Trading*

The Commission finds that adequate rules and procedures exist to govern the listing and trading of the Fund's shares. Fund shares will be deemed equity securities subject to NYSE rules governing the trading of equity securities, including, among others, rules governing trading halts,<sup>50</sup> responsibilities of the specialist, account opening and customer suitability requirements,<sup>51</sup> and the election of stop and stop limit orders.

In addition, the Exchange states that iShares are subject to the criteria for initial and continued listing of ICUs in Section 703.16 of the NYSE Manual. The Commission believes that the listing and delisting criteria for Fund shares should help to ensure that a minimum level of liquidity will exist in the Fund to allow for the maintenance of fair and orderly markets.

Accordingly, the Commission believes that the rules governing the trading of Fund shares provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

As noted above, the NYSE expects to require that a minimum of two Creation Units (100,000 iShares) will be required to be outstanding at the start of trading. The Commission believes that this minimum number is sufficient to help

to ensure that a minimum level of liquidity will exist at the start of trading.<sup>52</sup>

#### *E. Surveillance*

The Commission finds that NYSE has adequate surveillance procedures to monitor the trading of the proposed iShares, including concerns with specialists purchasing and redeeming Creation Units. The NYSE represents that it will rely on existing surveillance procedures governing ICUs currently trading on the Exchange. The Exchange is also able to obtain information regarding trading in both the Fund shares and the Component Securities by its members on any relevant market; in addition, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG, including, by way of example, the Hong Kong Stock Exchange.

#### *F. Accelerated Approval*

The Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,<sup>53</sup> for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that the proposal is consistent with the listing and trading standards in NYSE Rule 703.16 (Investment Company Units), and the Commission has previously approved similar products based on foreign indices.<sup>54</sup> The Commission does not believe that the proposed rule change, as amended, raises novel regulatory issues. Consequently, the Commission believes that it is appropriate to permit investors to benefit from the flexibility afforded by trading these products as soon as possible. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Exchange Act,<sup>55</sup> to approve the proposal on an accelerated basis.

#### **V. Conclusion**

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (SR-

NYSE-2004-55), is hereby approved on an accelerated basis.<sup>56</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>57</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. E4-2657 Filed 10-14-04; 8:45 am]

BILLING CODE 8010-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-50509; File No. SR-OCC-2004-10]

### **Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Establish an Internal Cross-Margin Program**

October 8, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, notice is hereby given that on June 4, 2004, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

OCC is seeking to amend its By-Laws and Rules as set forth below to create an internal cross-margining program that will permit a clearing member to establish a non-proprietary account for market professionals in which securities and security futures that are cleared by OCC in its capacity as a securities clearing agency may be cross-margined with commodity futures and options on such futures that are cleared by OCC in its capacity as a derivatives clearing organization ("DCO") registered as such under the Commodity Exchange Act (the "CEA").

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the

<sup>49</sup> Additional Information available to investors will include data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently the Fund's shares traded at a premium or discount to NAV based on the Bid-Asked Price and closing NAV, and the magnitude of such premiums and discounts; the Fund's Prospectus and two most recent reports to shareholders; and other quantitative information such as daily trading volume.

<sup>50</sup> In order to halt the trading of the Fund, the Exchange may consider, among others, factors including: (1) The extent to which trading is not occurring in stocks underlying the index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Fund shares is subject to trading halts caused by extraordinary market volatility pursuant to NYSE Rule 80B.

<sup>51</sup> Prior to commencement of trading, the Exchange states that it will issue an Information Circular informing members and member organizations of the characteristics of the Fund and of applicable Exchange rules, as well as the requirements of NYSE Rule 405 (Diligence as to Accounts).

<sup>52</sup> This minimum number of shares required to be outstanding at the start of trading is comparable to requirements that have been applied to previously listed series of Investment Company Units.

<sup>53</sup> 15 U.S.C. 78s(b)(2).

<sup>54</sup> See *supra* note 36. See also, e.g., Securities Exchange Act Release Nos. 44990 (October 25, 2001), 66 FR 56869 (November 13, 2001) (File No. SR-Amex-2001-45); 42748 (May 2, 2000), 65 FR 30155 (May 10, 2000); and 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (File No. SR-Amex-95-43).

<sup>55</sup> 15 U.S.C. 78s(b)(5).

<sup>56</sup> 15 U.S.C. 78s(b)(2).

<sup>57</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of this filing is to make cross-margining available to non-proprietary market professionals where the positions to be cross-margined are all maintained with OCC. This program is similar to cross-margining programs currently in effect between OCC and the Chicago Mercantile Exchange and other commodities clearing organizations with one major difference. The positions to be cross-margined under this proposal are all cleared by OCC. There is no second clearing organization. For this reason the program is called "internal" cross-margining. Internal cross-margining is possible because OCC, in its capacity as a DCO, can now clear futures and futures options subject to the exclusive jurisdiction of the Commodity Futures Trading Commission ("CFTC").

In the existing "external" cross-margining programs, OCC contracts with a DCO, such as the Chicago Mercantile Exchange, to permit a clearing member of OCC that is (or has an affiliate that is) a clearing member of the DCO to margin as a single portfolio its positions in security options cleared by OCC and its (or its affiliate's) positions in related commodity futures and commodity options thereon cleared by the DCO. Margin is assessed based on the net risk of the portfolio, and to the extent that the contracts in the account are offsetting from a risk perspective, the clearing member's margin requirement is less than it would be if the commodity positions were carried in accounts separate from the security positions.

Internal cross-margining functions in the same way except that the internal cross-margining account would contain only positions in contracts cleared by OCC. This greatly simplifies the arrangement in that it eliminates the need for contractual relationships between two clearing organizations, the holding of collateral for their joint benefit and loss sharing arrangements. As in the case of existing non-proprietary cross-margining programs,

the internal non-proprietary cross-margining account would be treated as a segregated futures account under Section 6d of the CEA and, in accordance with Appendix B to Part 190 of the CFTC's regulations, would be separately segregated from the regular segregated futures account that an OCC clearing member may maintain under Article VI, Section 3(f) of OCC's By-Laws. That futures account is confined to customer transactions in futures, futures options, and security futures (to the extent that such security futures are carried in futures accounts by the clearing member's customers) and may not include positions in security options.

OCC is seeking approval of internal cross-margining only in relation to accounts of non-proprietary market professionals. A market professional is, in essence, a market-maker, specialist or person acting in a similar capacity on a securities exchange, or a member of a futures exchange trading for its own account. A non-proprietary market professional is any market professional that is required to be treated as a "customer" under the CEA and therefore excludes any market professional that is affiliated with the carrying clearing member in a way that would cause its account to be treated as a "proprietary account" under Section 1.3(y) of the CFTC's regulations.

In the absence of an internal cross-margining program, clearing members would be unable to carry futures positions of non-proprietary market professionals in the same account as their positions in security options because of the segregation requirements applicable to the former under the Commodity Exchange Act.

Since it granted approval of the first cross-margining program in 1988, the Commission has repeatedly found that cross-margining programs are consistent with clearing agency responsibilities under Section 17A of the Act and highly beneficial to the clearing organization, its clearing members, and the public.<sup>3</sup> Cross-margining programs enhance clearing member and systemic liquidity which results in lower initial margin deposits. They reduce the risk that a clearing member will become insolvent in a distressed market and the corresponding risk that one insolvency could lead to multiple insolvencies in a ripple effect. They enhance the security of the clearing system.<sup>4</sup>

<sup>3</sup> Securities Exchange Act Release No. 26153 (Oct. 3, 1988), 53 FR 39567 [SR-OCC-86-17].

<sup>4</sup> Securities Exchange Act Release No. 32708 (Aug. 2, 1993), 58 FR 42586 [SR-OCC-93-13].

The following are particular points of interest about OCC's internal cross-margining program.

(1) Amended Definition

The existing definition of "Market Professional" in Article I of OCC's By-Laws is amended to substitute a reference to OCC in place of the reference to the Intermarket Clearing Corporation, which has been merged into OCC.

(2) Absence of Cross-Margining Agreement

All established external cross-margining programs involving OCC have a cross-margining agreement as the constitutive and governing document. The parties to these cross-margining agreements are the clearing organizations that clear the trades in the cross-margining accounts of a joint clearing member or a pair of affiliated clearing members. Internal cross-margining, however, does not require a cross-margining agreement because the only participating clearing organization is OCC.

(3) Requirement of Market Professional's Agreement

The terms governing the cross-margining arrangements between OCC and each participating clearing member are set forth in OCC's By-Laws and Rules. The rights and obligations of a non-proprietary market professional that wants the benefits of internal cross-margining vis-à-vis the clearing member through which it clears are not covered in the By-Laws and Rules and so must be made the subject of a separate agreement. The execution of such an agreement, the "Market Professional's Agreement for Internal Cross-Margining," is a requirement for the market professional's participation in the program.<sup>5</sup>

(4) Amendments to Chapter XI of the Rules

Amendments to Rules 1104 through 1107 of Chapter XI of OCC's Rules, which governs the suspension of a clearing member, all relate to the liquidation of a suspended clearing member that participates in the internal cross-margining program. Similar to the separate rules that govern the liquidation of the segregated futures account, additional separate rules were created to govern the liquidation of the internal non-proprietary cross-margining account. They are both segregated accounts under the

<sup>2</sup> The Commission has modified the text of the summaries prepared by OCC.

<sup>5</sup> A copy of the form Market Professional's Agreement for Internal Cross-Margining is attached as part of the OCC filing.

Commodity Exchange Act, and the positions and other assets of each account may not be commingled with those not in that account or be used to satisfy obligations other than those arising from activity in that account. Thus, in each place where special provision in OCC's Rules is made for the segregated futures account, a parallel provision for the internal non-proprietary cross-margining account has been inserted with a parallel purpose and effect.

#### (5) Regulatory Approvals

In addition to the approval of the Commission, OCC must also obtain the approval of the CFTC to the commingling of positions of non-proprietary market professionals in futures products with their security options positions. OCC is concurrently applying to the CFTC for such approval.

#### (B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

#### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F)<sup>6</sup> of the Act, which requires that the rules of a clearing agency be designed to provide for the safeguarding of securities and funds which are in its possession or control or for which it is responsible. By establishing an internal cross-margin program, OCC will provide its members with the benefits of cross-margining, including greater liquidity and more efficient use of collateral, in a manner that is consistent with OCC's overall risk management process.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because such approval will allow OCC to implement the proposed rule change so that its members immediately have the

benefits of cross-margining options on variability indexes with commodity futures on variability indexes.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2004-10 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-OCC-2004-10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at <http://www.optionsclearing.com>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2004-10 and should be submitted on or before November 5, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. E4-2656 Filed 10-14-04; 8:45 am]

BILLING CODE 8010-01-P

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3624]

#### State of Alabama; Amendment #2

In accordance with notices received from the Department of Homeland Security—Federal Emergency Management Agency—effective September 30 and October 4, 2004, the above numbered declaration is hereby amended to establish the incident period as beginning September 13, 2004 and continuing through September 30, 2004. The declaration is also amended to include Chambers, Colbert, DeKalb, Henry, Houston, Jackson, Lauderdale, Limestone, Madison, Morgan, Randolph, and Russell as disaster areas due to damages caused by Hurricane Ivan.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Carroll, Chatahoochie, Chattooga, Dade, Early, Heard, Seminole, Troup, and Walker in the State of Georgia; and Franklin, Hardin, Giles, Lawrence, Lincoln, Marion, and Wayne Counties in the State of Tennessee may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have previously been declared. In addition, Autauga, Baldwin, Bibb, Butler, Chilton, Choctaw, Clarke, Coffee, Conecuh, Coosa, Covington, Crenshaw, Dallas, Elmore, Escambia, Geneva, Greene, Hale, Jefferson, Lowndes, Marengo, Mobile, Monroe, Montgomery, Perry, Pickens, Shelby, Sumter, Talladega, Tuscaloosa, Washington, and Wilcox Counties in the State of Alabama are also eligible under Public Assistance and our disaster loan program is available for private non-profit organizations that provide essential services of a governmental nature in those counties.

The economic injury disaster number assigned to Tennessee is 9AE400 and the Public Assistance number assigned to Alabama is P06208.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 15, 2004 and for economic injury the deadline is June 15, 2005.

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 6, 2004.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 04-23139 Filed 10-14-04; 8:45 am]

BILLING CODE 8025-01-P

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3634]

#### Commonwealth of Puerto Rico; Amendment #2

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective September 29, 2004, the above numbered declaration is hereby amended to include the Municipality of Fajardo as a disaster area due to damages caused by Tropical Storm Jeanne. All other municipalities contiguous to the above named primary municipality have previously been declared.

In addition, Adjuntas, Aguada, Aguadilla, Aguas Buenas, Aibonito, Arecibo, Arroyo, Barceloneta, Caguas, Camuy, Cayey, Cidra, Comerio, Corozal, Culebra, Guaynabo, Hatillo, Hormigueros, Humacao, Jayuya, Las Marias, Las Piedras, Luquillo, Manati, Maricao, Maunabo, Morovis, Naguabo, Orocovis, Patillas, Quebradillas, Rincon, Santa Isabel, Trujillo Alto Municipalities, Utuado, Vieques, Villalba, and Yabucoa Municipalities in the Commonwealth of Puerto Rico are also eligible under Public Assistance and our disaster loan program is available for private non-profit organizations that provide essential services of a governmental nature in those municipalities.

The Public Assistance number assigned to Puerto Rico is P06308.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 22, 2004 and for economic injury the deadline is June 21, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 6, 2004.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 04-23140 Filed 10-14-04; 8:45 am]

BILLING CODE 8025-01-P

## DEPARTMENT OF STATE

### [Public Notice 4861]

#### Unclassified; National Interest Determination and Waiver of Section 620(q) of the Foreign Assistance Act of 1961, as Amended, Relating to Assistance to Ethiopia

Pursuant to the authority vested in me, *inter alia*, by section 620(q) of the Foreign Assistance Act of 1961, as amended, (FAA) (22 U.S.C. 2370) and Executive Order 12163, I hereby determine that assistance to Ethiopia is in the national interest of the United States and waive, with respect to that country, the application of section 620(q) of the FAA.

This determination shall be reported to Congress and published in the **Federal Register**.

Dated: September 29, 2004.

**Colin L. Powell,**

*Secretary of State, Department of State.*

[FR Doc. 04-23172 Filed 10-14-04; 8:45 am]

BILLING CODE 4710-26-P

## DEPARTMENT OF STATE

### [Public Notice 4850]

#### In the Matter of the Designation of Jam'at al Tawhid wa'al-Jihad, Also Known as the Monotheism and Jihad Group, Also Known as the al-Zarqawi Network, Also Known as al-Tawhid, as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act

Based upon a review of the Administrative Record assembled in this matter, and in consultation with the Attorney General and the Secretary of the Treasury, the Secretary of State has concluded that there is a sufficient factual basis to find that the relevant circumstances described in section 219 of the Immigration and Nationality Act, as amended (8 U.S.C. 1189, hereinafter "INA"), exist with respect to Jam'at al Tawhid wa'al-Jihad.

Therefore, effective October 15, 2004, the Secretary of State hereby designates that organization as a foreign terrorist organization pursuant to section 219(1) of the INA.

Dated: October 8, 2004.

**Ambassador Cofer Black,**

*Coordinator for Counterterrorism, Department of State.*

[FR Doc. 04-23173 Filed 10-14-04; 5:00 pm]

BILLING CODE 4710-10-P

## DEPARTMENT OF STATE

### [Public Notice 4851]

#### Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to the Designation of Jam'at al Tawhid wa'al-Jihad, Also Known as the Monotheism and Jihad Group, Also Known as the al-Zarqawi Network, Also Known as al-Tawhid

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13286 of July 2, 2002, and Executive Order 13284 of January 23, 2003, and in consultation with the Secretary of the Treasury, the Attorney General, and the Secretary of Homeland Security, I hereby determine that the organization known as Jam'at al Tawhid wa'al-Jihad, also known as the Monotheism and Jihad Group, also known as the al-Zarqawi Network, also known as al-Tawhid, has committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 27, 2004.

**Colin L. Powell,**

*Secretary of State, Department of State.*

[FR Doc. 04-23174 Filed 10-14-04; 5:00 pm]

BILLING CODE 4710-10-P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2004-17984]

#### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** The FMCSA announces its decision to exempt 30 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

**DATES:** October 15, 2004.

**FOR FURTHER INFORMATION CONTACT:** Maggi Gunnels, Office of Bus and Truck Standards and Operations, (202) 366-2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

You may see all the comments online through the Document Management System (DMS) at: <http://dmses.dot.gov>.

**Background**

On June 17, 2004, the FMCSA published a notice of receipt of exemption applications from 30 individuals, and requested comments from the public (69 FR 33997). The 30 individuals petitioned the FMCSA for exemptions from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. They are: Robert L. Aurandt, Harry R. Brewer, Wilford F. Christian, Timothy A. DeFrange, Terry G. Dickson, Sr., Clarence N. Florey, Jr., Bobby C. Floyd, Steve H. Garrison, Ronald A. Gentry, Scott D. Goalder, Raymond P. Gonzales, David M. Hagadorn, Donald R. Hiltz, James L. Hooks, Francisco J. Jimenez, Kelly R. Konesky, Gregory T. Lingard, Hollis J. Martin, Truman J. Mathis, Robert E. Moore, Kevin C. Palmer, Charles O. Rhodes, Einar H. Rice, Gordon G. Roth, Manuel Sanchez, Chris H. Schultz, Halman Smith, Norman K. Stepleton, LaLanne Taylor, and James A. Walker.

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the 2-year period. Accordingly, the FMCSA has evaluated the 30 applications on their merits and made a determination to grant exemptions from the vision requirements to all of them. The comment period closed on July 19,

2004. Two comments were received, and their contents were carefully considered by the FMCSA in reaching the final decision to grant the exemptions.

**Vision and Driving Experience of the Applicants**

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

Since 1992, the agency has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., Visual Requirements and Commercial Drivers, October 16, 1998, filed in the docket, FHWA-98-4334.) The panel's conclusion supports the agency's view that the present visual acuity standard is reasonable and necessary as a general standard to ensure highway safety. The FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 30 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, macular and retinal scars, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but eight of the applicants were either born with their vision impairments or have had them since childhood. The eight individuals who sustained their vision conditions as adults have had them for periods ranging from 8 to 37 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion has sufficient vision to perform all the tasks necessary to operate a CMV. The

doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate a CMV. All of these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 30 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 52 years. In the past 3 years, five of the drivers have had convictions for traffic violations. Five of these convictions were for speeding and one was for "traffic turn/signal violation." One of the drivers was involved in a crash but did not receive a citation.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the June 17, 2004, notice (69 FR 33997). Since there were no substantial docket comments on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here. Our summary analysis of the applicants is supported by the information published on June 17, 2004 (69 FR 33997).

**Basis for Exemption Determination**

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10), if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants are able to drive only in intrastate commerce. With the exemption, applicants could also drive in interstate commerce. Thus, our analysis focuses on whether allowing these drivers to drive in interstate commerce will achieve an equal or greater level of safety as exists under current conditions.

To evaluate the effect of these exemptions on safety, the FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, the FMCSA requires a person to present verifiable evidence that he or she has driven a commercial vehicle

safely with the vision deficiency for 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his or her past record of crashes and traffic violations. Copies of the studies may be found at docket number FMCSA-98-3637.

We believe we can properly apply the principle to monocular drivers, because data from a former FMCSA waiver study program clearly demonstrates that the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (*See* 61 FR 13338, 13345, March 26, 1996.) The fact that experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly. (*See* Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes. (*See* Weber, Donald C., “Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,” *Journal of American Statistical Association*, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 30 applicants receiving an exemption,

we note that the applicants have had only one crash and six traffic violations in the last 3 years. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants’ ample driving histories with their vision deficiencies are good predictors of future performance, the FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants’ intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he or she has been performing in intrastate commerce. Consequently, the FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e) to the 30 applicants listed in the notice of June 17, 2004 (69 FR 33997).

We recognize that the vision of an applicant may change and affect his or her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the FMCSA will impose requirements on the 30 individuals consistent with the grandfathering provisions applied to drivers who participated in the agency’s vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical

examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist’s or optometrist’s report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver’s qualification file, or keep a copy in his or her driver’s qualification file if he or she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

#### Discussion of Comments

The FMCSA received two comments in this proceeding. The comments were considered and are discussed below.

An anonymous responder believes the qualifications presented for each applicant should include: (1) A standardized statement from an ophthalmologist, including peripheral vision and any other measurement of ability to see, guaranteeing there is absolutely no danger to any other driver; and (2) observations of driving behavior reported to the DOT by other drivers. Although this comment was introduced into the docket without attribution and, thus, would not ordinarily receive consideration, we will address the issues raised because they relate to matters of general applicability to the vision waiver process and are not specific to this comment. In regard to the first issue presented, the FMCSA does not rely solely on the vision examination and the eye specialist’s statement to determine whether a driver should be exempted. In the agency’s overall determination of whether exempting an applicant from the vision standard is likely to achieve a level of safety equal to that existing without the exemption, as required by statute, the medical information it receives is combined with information on the experience and driving record of the applicant. The opinions of the vision specialists on whether a driver has sufficient vision to perform the tasks associated with operating a CMV are made only after a thorough vision examination, including formal field of vision testing to identify any medical condition which may compromise the visual field, such as glaucoma, stroke or brain tumor. The FMCSA believes it can rely on medical opinions regarding whether a driver’s visual capacity is sufficient to enable safe operations. In regard to the second requirement suggested by the responder, the FMCSA believes using official driving records



from the States and providing the public an opportunity to comment on each applicant's qualifications allows the public to have input while avoiding the use of unproven allegations.

Advocates for Highway and Auto Safety (Advocates) expresses continued opposition to the FMCSA's policy to grant exemptions from the FMCSRs, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which the FMCSA presents driver information to the public and makes safety determinations; (2) objects to the agency's reliance on conclusions drawn from the vision waiver program; (3) claims the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. §§ 31315 and 31136(e)); and finally (4) suggests that a 1999 Supreme Court decision affects the legal validity of vision exemptions. The issues raised by Advocates were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). We will not address these points again here, but refer interested parties to those earlier discussions.

### Conclusion

After considering the comments to the docket and based upon its evaluation of the 30 exemption applications, the FMCSA exempts Robert L. Aurandt, Harry R. Brewer, Wilford F. Christian, Timothy A. DeFrange, Terry G. Dickson, Sr., Clarence N. Florey, Jr., Bobby C. Floyd, Steve H. Garrison, Ronald A. Gentry, Scott D. Goalder, Raymond P. Gonzales, David M. Hagadorn, Donald R. Hiltz, James L. Hooks, Francisco J. Jimenez, Kelly R. Konesky, Gregory T. Lingard, Hollis J. Martin, Truman J. Mathis, Robert E. Moore, Kevin C. Palmer, Charles O. Rhodes, Einar H. Rice, Gordon G. Roth, Manuel Sanchez, Chris H. Schultz, Halman Smith, Norman K. Stepleton, LaLanne Taylor, and James A. Walker from the vision requirement in 49 CFR § 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136.

If the exemption is still effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

Issued on: October 12, 2004.

**Rose A. McMurray,**

*Associate Administrator, Policy and Program Development.*

[FR Doc. 04-23162 Filed 10-14-04; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34553]

#### **Idaho & Sedalia Transportation Company, LLC—Lease Exemption—Idaho Northern & Pacific Railroad Company**

Idaho & Sedalia Transportation Company, LLC (I&S), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from Idaho Northern & Pacific Railroad Company (INPR) and operate 5 miles of rail line between milepost 94.68, near Cascade, and milepost 99.68, at Cascade, ID.

I&S certifies that its projected revenues as a result of this transaction will not result in I&S becoming a Class II or Class I rail carrier, and further certifies that its projected revenues will not exceed \$5 million. The transaction was scheduled to be consummated on or shortly after September 22, 2004.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34553, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Karl Morell, Ball Janik LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on its Web site at <http://www.stb.dot.gov>.

Decided: October 7, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**  
*Secretary.*

[FR Doc. 04-23050 Filed 10-14-04; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF THE TREASURY

### **Office of International Affairs; Treasury International Capital (TIC) Form D: Report of Holdings of, and Transactions in, Financial Derivatives Contracts With Foreign Residents**

**AGENCY:** Departmental Offices, Department of the Treasury.

**ACTION:** Notice of reporting requirements.

**SUMMARY:** By this Notice, the Department of the Treasury is informing the public that it is conducting a mandatory quarterly collection of information on holdings and transactions in financial derivatives contracts undertaken between foreign resident counterparties and major U.S.-resident participants in derivatives markets. This Notice constitutes legal notification to all United States persons who are in the reporting panel set forth in this Notice that they must respond to this collection of information. Copies of the Form D report and instructions may be printed from the Internet at: <http://www.treas.gov/tic/forms.html>.

**Who Must Report:** The reporting panel consists of all U.S.-resident participants in derivatives markets, where each reporter holds derivatives having a total notional value in excess of \$100 billion, measured on a consolidated-worldwide accounting basis, at the end of the calendar quarter being reported. The worldwide total includes all derivatives contracts with both U.S. and foreign residents, and all contracts in the accounts of both the reporter and the reporter's customers.

**What to Report:** This report will collect information on all over-the-counter (OTC) and exchange-traded derivatives contracts with foreign residents that meet the definition of a derivatives contract in FASB Statement No. 133, as amended.

**How to Report:** Copies of Form D report and instructions, which contain complete information on reporting procedures and definitions, may be obtained at the Web site address given above in the **SUMMARY**, or by contacting the survey staff of the Federal Reserve Bank of New York at (212) 720-6300. The mailing address is: Federal Reserve Bank of New York, Statistics Function, 4th Floor, 33 Liberty Street, New York, NY 10045-0001. Inquiries also may be made to Dwight Wolkow at (202) 622-1276, e-mail: [dwight.wolkow@do.treas.gov](mailto:dwight.wolkow@do.treas.gov).

**When to Report:** Data must be submitted to the Federal Reserve Bank of New York, acting as fiscal agent for the Department of the Treasury, no later



than 60 calendar days after the end of the calendar quarter being reported. In order to reduce the initial reporting burden in 2005 associated with implementing this information collection, these mandatory reporting requirements will be phased in over a period of three quarters. In the first phase, reporting will begin for all fair value positions in the first two columns of Form D, and for net settlements for only OTC foreign exchange contracts. This phase will be effective beginning with the March 2005 reporting date, which covers the first calendar quarter of 2005. In the second phase, reporting will begin for net settlements data for all exchange-traded contracts and will be effective beginning with the June 2005 reporting date, which covers the second calendar quarter of 2005. In the final phase, reporting will begin for all of the remaining information. This Phase will be implemented beginning with the September 2005 reporting date, which covers the third calendar quarter of 2005.

**Paperwork Reduction Act Notice:** This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 1505-0199. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. The estimated average burden associated with this collection of information, when fully implemented, is 30 hours per respondent per filing. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Department of the Treasury, Attention Administrator, International Portfolio Investment Data Reporting Systems, Room 4410@1440NYA, Washington, DC 20220, and to OMB, Attention Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

**Dwight Wolkow,**

*Administrator, International Portfolio Investment Data Reporting Systems.*

[FR Doc. 04-23170 Filed 10-14-04; 8:45 am]

**BILLING CODE 4810-25-P**

## DEPARTMENT OF THE TREASURY

### Office of International Affairs

#### Survey of U.S. Ownership of Foreign Securities as of December 31, 2004

**AGENCY:** Departmental Offices, Department of the Treasury.

**ACTION:** Notice of reporting requirements.

**SUMMARY:** By this Notice, the Department of the Treasury is informing the public that it is conducting a mandatory survey of U.S. ownership of foreign securities as of December 31, 2004. This notice constitutes legal notification to all United States persons who are in the reporting panel set forth in this Notice that they must respond to this survey. Additional copies of the reporting form SHCA and instructions may be printed from the Internet at: <http://www.treas.gov/tic/forms.html>.

**Who Must Report:** It is expected that reporting will be required only from those organizations which reported the largest values of securities data on the benchmark survey Form SHC entitled "U.S. Ownership of Foreign Securities, Including Selected Money Market Instruments as of December 31, 2001". The panel for this survey is expected to include: the 36 largest custodians and largest end-investors that filed schedule 2 in the aforementioned 2001 benchmark survey; and 194 of the next largest end-investors that filed schedule 3 in the aforementioned 2001 benchmark survey. Entities required to report will be contacted individually by the Federal Reserve Bank of New York. Entities not contacted by the Federal Reserve Bank of New York have no reporting responsibilities.

**What to Report:** This report will collect information on U.S. resident holdings of foreign securities, *i.e.*, equities, long-term debt securities, and short-term debt securities (including selected money market instruments).

**How to Report:** Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, may be obtained at the Web site address given above in the **SUMMARY**, or by contacting the survey staff of the Federal Reserve Bank of New York at (212) 720-6300, e-mail: [SHC.help@ny.frb.org](mailto:SHC.help@ny.frb.org). The mailing address is: Federal Reserve Bank of New York, Statistics Function, 4th Floor, 33 Liberty Street, New York, NY 10045-0001.

**When to Report:** Data must be submitted to the Federal Reserve Bank of New York, acting as fiscal agent for the Department of the Treasury, by March 4, 2005.

**Paperwork Reduction Act Notice:** This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 1505-0146. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. The estimated average burden associated with this collection of information is 48 hours per respondent for end-investors and custodians that file schedule 3 reports covering their securities entrusted to U.S. resident custodians, 145 hours per respondent for large end-investors filing Schedule 2 reports, and 700 hours per respondent for large custodians of securities filing Schedule 2 reports. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Department of the Treasury, Attention Administrator, International Portfolio Investment Data Reporting Systems, Room 4410@1440NYA, Washington, DC 20220, and to OMB, Attention Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

**Dwight Wolkow,**

*Administrator, International Portfolio Investment Data Reporting Systems.*

[FR Doc. 04-23171 Filed 10-14-04; 8:45 am]

**BILLING CODE 4810-25-P**

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### Proposed Information Collection; Comment Request

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Currently, we are seeking comments on the TTB Form 5130.6 titled "Drawback on Beer Exported."

**DATES:** We must receive your written comments on or before December 14, 2004.

**ADDRESSES:** You may send comments to Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044-4412;
- 202-927-8525 (facsimile); or
- [formcomments@ttb.gov](mailto:formcomments@ttb.gov) (e-mail).

Please reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

**FOR FURTHER INFORMATION CONTACT:** To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412; or telephone 202-927-8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Drawback on Beer Exported.

*OMB Number:* 1513-0017.

*TTB Form Number:* 5130.6.

*Abstract:* When taxpaid beer is removed from a brewery and ultimately exported, the brewer exporting the beer is eligible for a drawback (refund) of Federal taxes paid. By completing this form and submitting documentation of exportation, the brewer may receive a refund of Federal taxes paid.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 100.

*Estimated Total Annual Burden Hours:* 5,000.

**Request for Comments**

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of this information collection. All comments are part of the public record and subject to disclosure. Please not do include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and

clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Dated: September 27, 2004.

**William H. Foster,**

*Chief, Regulations and Procedures Division.*

[FR Doc. 04-23158 Filed 10-14-04; 8:45 am]

**BILLING CODE 4810-31-P**

**DEPARTMENT OF THE TREASURY**

**Alcohol and Tobacco Tax and Trade Bureau**

**Proposed Information Collection; Comment Request**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Currently, we are seeking comments on the TTB Form 5200.7 titled "Schedule of Tobacco Products, Cigarette Papers or Tubes Withdrawn from the Market."

**DATES:** We must receive your written comments on or before December 14, 2004.

**ADDRESSES:** You may send comments to Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044-4412;
- 202-927-8525 (facsimile); or
- [formcomments@ttb.gov](mailto:formcomments@ttb.gov) (e-mail).

Please reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

**FOR FURTHER INFORMATION CONTACT:** To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Sandra Turner,

Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412; or telephone (202) 927-8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Schedule of Tobacco Products, Cigarette Papers or Tubes Withdrawn from the Market.

*OMB Number:* 1513-0034.

*TTB Form Number:* 5200.7.

*Abstract:* TTB Form 5200.7 is used by persons who intend to withdraw tobacco products from the market for which the taxes has already been paid or determined. The form describes the products that are to be withdrawn to determine the amount of tax to be claimed later as a tax credit or refund. The form notifies TTB when withdrawal or destruction is to take place, and TTB may elect to supervise withdrawal or destruction.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 119.

*Estimated Total Annual Burden Hours:* 1,071.

**Request for Comments**

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of this information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Dated: September 27, 2004.

**William H. Foster,**

*Chief, Regulations and Procedures Division.*

[FR Doc. 04-23159 Filed 10-14-04; 8:45 am]

**BILLING CODE 4810-31-P**

**DEPARTMENT OF THE TREASURY****Alcohol and Tobacco Tax and Trade Bureau****Proposed Information Collection; Comment Request**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Currently, we are seeking comments on TTB's Recordkeeping Requirement Number 5210/6 titled "Tobacco Products Manufacturers—Supporting Records for Removals for the Use of the United States."

**DATES:** We must receive your written comments on or before December 14, 2004.

**ADDRESSES:** You may send comments to Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044-4412;
- 202-927-8525 (facsimile); or
- [formcomments@ttb.gov](mailto:formcomments@ttb.gov) (e-mail).

Please reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

**FOR FURTHER INFORMATION CONTACT:** To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412; or telephone 202-927-8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Tobacco Products Manufacturers—Supporting Records for Removals for the Use of the United States.

*OMB Number:* 1513-0069.

*TTB Recordkeeping Requirement Number:* 5210/6.

*Abstract:* Tobacco products have historically been a major source of excise tax revenues for the Federal

government. In order to safeguard these taxes, tobacco products manufacturers are required to maintain a system of records designed to establish accountability over the tobacco products and cigarette papers and tubes produced. However, these items can be removed without the payment of tax if they are for the use of the United States. Records shall be retained by the manufacturer for 3 years following the close of the year covered therein and shall be made available for inspection by any TTB officer upon his request.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 101.

*Estimated Total Annual Burden Hours:* 505.

**Request for Comments**

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of this information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Dated: September 27, 2004.

**William H. Foster,**

*Chief, Regulations and Procedures Division.*

[FR Doc. 04-23160 Filed 10-14-04; 8:45 am]

**BILLING CODE 4810-31-P**

**DEPARTMENT OF THE TREASURY****Alcohol and Tobacco Tax and Trade Bureau****Proposed Information Collection; Comment Request**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Currently, we are seeking comments on TTB's Recordkeeping Requirement Number 5210/10 titled "Tobacco—Record of Disposition of More Than 60,000 Cigarettes in a Single Transaction."

**DATES:** We must receive your written comments on or before December 14, 2004.

**ADDRESSES:** You may send comments to Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044-4412;
- 202-927-8525 (facsimile); or
- [formcomments@ttb.gov](mailto:formcomments@ttb.gov) (e-mail).

Please reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

**FOR FURTHER INFORMATION CONTACT:** To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412; or telephone 202-927-8210.

**SUPPLEMENTARY INFORMATION:** *Title:* Tobacco—Record of Disposition of More Than 60,000 Cigarettes in a Single Transaction.

*OMB Number:* 1513-0076.

*TTB Recordkeeping Requirement Number:* 5210/10.

*Abstract:* Records must be maintained by tobacco products manufacturers and cigarette distributors showing the details of large cigarette transactions. The records are used to trace the

movement of contraband cigarettes and to help curtail the illicit traffic in cigarettes between states. The record retention period for this information collection is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 9,500.

*Estimated Total Annual Burden Hours:* 1,140,000.

#### **Request for Comments**

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of this information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of

the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Dated: September 27, 2004.

**William H. Foster,**

*Chief, Regulations and Procedures Division.*

[FR Doc. 04-23161 Filed 10-14-04; 8:45 am]

**BILLING CODE 4810-31-P**

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**LIST OF PUBLIC LAWS**

This is a continuing list of public bills from the current

session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at [http://www.archives.gov/federal\\_register/public\\_laws/public\\_laws.html](http://www.archives.gov/federal_register/public_laws/public_laws.html).

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.gpoaccess.gov/plaws/index.html>. Some laws may not yet be available.

**H.R. 1308/P.L. 108-311**  
Working Families Tax Relief Act of 2004 (Oct. 4, 2004; 118 Stat. 1166)

**H.R. 265/P.L. 108-312**  
Mount Rainier National Park Boundary Adjustment Act of 2004 (Oct. 5, 2004; 118 Stat. 1194)

**H.R. 1521/P.L. 108-313**  
Johnstown Flood National Memorial Boundary Adjustment Act of 2004 (Oct. 5, 2004; 118 Stat. 1196)

**H.R. 1616/P.L. 108-314**  
Martin Luther King, Junior, National Historic Site Land

Exchange Act (Oct. 5, 2004; 118 Stat. 1198)

**H.R. 1648/P.L. 108-315**  
Carpinteria and Montecito Water Distribution Systems Conveyance Act of 2004 (Oct. 5, 2004; 118 Stat. 1200)

**H.R. 1732/P.L. 108-316**  
To amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Williamson County, Texas, Water Recycling and Reuse Project, and for other purposes. (Oct. 5, 2004; 118 Stat. 1202)

**H.R. 2696/P.L. 108-317**  
Southwest Forest Health and Wildfire Prevention Act of 2004 (Oct. 5, 2004; 118 Stat. 1204)

**H.R. 3209/P.L. 108-318**  
To amend the Reclamation Project Authorization Act of 1972 to clarify the acreage for which the North Loup division is authorized to provide irrigation water under the Missouri River Basin project. (Oct. 5, 2004; 118 Stat. 1211)

**H.R. 3249/P.L. 108-319**  
To extend the term of the Forest Counties Payments Committee. (Oct. 5, 2004; 118 Stat. 1212)

**H.R. 3389/P.L. 108-320**  
To amend the Stevenson-Wydler Technology Innovation Act of 1980 to permit Malcolm Baldrige National Quality

Awards to be made to nonprofit organizations. (Oct. 5, 2004; 118 Stat. 1213)

**H.R. 3768/P.L. 108-321**  
Timucuan Ecological and Historic Preserve Boundary Revision Act of 2004 (Oct. 5, 2004; 118 Stat. 1214)

**S.J. Res. 41/P.L. 108-322**  
Commemorating the opening of the National Museum of the American Indian. (Oct. 5, 2004; 118 Stat. 1216)

**H.R. 4654/P.L. 108-323**  
To reauthorize the Tropical Forest Conservation Act of 1998 through fiscal year 2007, and for other purposes. (Oct. 6, 2004; 118 Stat. 1218)

**Last List October 6, 2004**

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